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## P R E F A C E

MOST of the substance of this book is the produce of reading and lecturing in History and Politics at a college attached to the University of Madras. It is published so that it may be of some use to students, whether at Universities or elsewhere, of historical politics. Its special claim to publication rests on the fact that the making of the State is studied from the standpoint of India, and that the facts and illustrations are taken largely from Indian and Eastern political experience. Ever since the writer took up the study of politics as an undergraduate of the University of Madras the question he has asked himself at every step of that study has been, "How will this fact, or idea, or institution help or retard the making of India?" A frankly practical purpose has been the incentive of his studies. That is why, apart from the facts of history, his instructors in politics are statesmen and men of affairs—Burke at the head of them, and Bacon and Napoleon, and Richelieu and Talleyrand. And more is to be learnt by way of warning or advice from Machiavelli than from Hobbes or Rousseau. Nor is the debt little that he owes to lawyers like Maine and Ihering and Gierke, and to journalistic publicists like Frantz and Förster. He has learnt in the halls and lobbies of the Madras Legislative Council and of the Legislative Assembly at Delhi, and in municipal and provincial elections, things which he could not have learnt in his library. And in these days, when India is so much in the making, the writer dares to hope that the book may be of some interest to the general public. To people outside India, the very emphasis on certain institutions and ideas which are nearer to the business and bosoms of people in India than they may be to those elsewhere may prove to be instructive. To see politics as an Indian sees it may not be a gift—it may be only a signpost. Even so, the writer hopes the book will have its day.

MADRAS, 1932

M. RUTHNASWAMY



# THE MAKING OF THE STATE

## I

### AN OUTLINE HISTORY OF THE STATE

"Magnus ab integro saeculorum nascitur ordo."  
VIRGIL, *Eclog.* IV.

#### SOURCES

Burke,<sup>1</sup> writing to Robertson, the historian of America, congratulated himself and his generation on their superior good fortune to that of Greek students of politics, like Thucydides and Aristotle, who "were able to trace the progress of society only within their limits," in the large volume of knowledge that was available to them and on which they could build their political judgments. Our good fortune is even greater than that of Burke, for newer worlds than those known to him have swum into our ken. There is the history of the world since Burke's time, packed with facts and events that in their number and succession might have staggered even that capacious intellect. The sciences of Ethnology and Anthropology have revealed the social life of the waifs and strays of history, the savage tribes that are our contemporaries. The origins of religion, of law and social institutions have been investigated by an army of scholars. Antiquity and the modern world have been explored for the facts of the social life of man. But it is doubtful whether all this abundance of knowledge enables us to know how the State and organized political life actually came into existence.

#### QUESTION OF ORIGINS

To say that man is a political animal does not help us to go far in our investigation of the origin of the State. Or rather, it

<sup>1</sup> Quoted in Prior's *Life of Edmund Burke*.

allows us to go so far that we are lost in the gloom of obscurity. For, while the famous maxim of Aristotle helps us to defend the naturalness and inevitability of the State against the unhistorical origins explicit in theories of the *Social Contract*, it does not help us to answer the questions, How does the State as a fact come into existence? What is it that impels one people to form a State while another goes on refusing to form it? What are the steps that people take to arrive even at incipient Statehood? How did man step across the gap that separates the State from the preceding stage of existence? Answers to these questions, some of the most interesting in political science, are also among the most difficult. For we have not the records and the evidence sufficient either in quantity or in quality that will allow us to formulate fairly well-grounded views about the origin of the State. For one thing, as G. K. Chesterton reminds us in the *Everlasting Man*, however far we may go back to historical records we find the State already in existence. The antiquities of Sumeria, Egypt, or China, or India reveal the essential life of the State and its necessary attributes and institutions. Government, law, political obedience and political unity already are there. The State synchronizes with history. Even if we take the contemporary savages of Australia or Africa as representing the first peoples of the earth in the pre-State stage of history—for after all they may be the *débris* of former civilizations—it is not given to us to watch them developing into Statehood. For all of them are living under the auspices of other States, and if they come of age politically will incorporate their life with the larger political life around them.

We know so little about that most important stage in the history of the State when the State first began to be that we cannot form a more or less satisfactory picture of what happened at the beginning of things. We know especially little about the period when man made that leap from the no-State land into the land of the State which is to us in the present state of knowledge a leap in the dark. The *Staatendämmerung* is as

much wrapped in mist as the *Götterdämmerung*. The missing link of the State is as hard to find as that of man. And we cannot even build theories upon remains and skeletons as we have on those of man. For a Neanderthal State can never be found. The buried cities of Mesopotamia or Khotan or Yucatan are the relics of grown-up political civilizations. And even from the ruins of a Pompeii or a Herculaneum, or a Mohenjo Daro or a Harappa, one cannot construct the size and shape and form of the government of a State. But from the traditions and memories of some peoples embedded in their early literature, and from hints revealed by archaic customs and beliefs, it is just possible to form a picture of the way in which the State may have come to life.

#### HINTS AT ORIGINS

Ancient Indian literature gives us a few hints as to the origin of the State gathered indirectly from race-memory. When, according to the *Mahabharata*,<sup>1</sup> people without government found themselves destroying one another as the larger fishes devour the smaller, they assembled together and made *samayiah*, agreeing to expel from their midst persons guilty of anti-social crimes and those who would break the compact. This Hobbesian account of the first State of man is paralleled in another part of the *Mahabharata*<sup>2</sup> by a Rousseauistic account. There were at first, says the Rishi Bhishma to the King Yudhishtra, neither sovereign nor sovereignty, neither punishment nor punisher, for the people used to be governed by Dharma, that is righteousness, which idealistic State, however, soon gave way to sin and evil. To save man from perishing, God created Dandanithi, or the Law of Punishment. These alternative Hindu theories of the origin of the State find a curious parallel in Genesis. The first state of man was one of innocence and happiness, when man was to replenish the earth, subdue and have dominion over it in ease and peace. But sin brought

<sup>1</sup> Santi Parva, I.XVII.

<sup>2</sup> Ibid., LIX, quoted in Ghosal, *Hindu Political Theory*.



with it crime and coercive government. The new lease of life given to man and the earth under Noah, when God made a new covenant with him, had been preceded by a period of wickedness that was great and that could be cleansed only by a deluge.

## TWO PARALLEL ROADS

The two parallel views—I advisedly do not call them alternative—of the origin of the State, which we may trace to the race-memory of two peoples so different as the Hindus and the Hebrews of antiquity, indicate the two paths by which we have to follow the origin of the State. These two theories probably mark out the two parallel roads which the State took at the beginning. There were peoples who were from the beginning peaceful and sociable and built up the first foundations of the State and of government under the impulse of social instincts. There were others, on the other hand, who imposed the yoke of the State on themselves in order to save themselves from extinction. Such were the first Romans, if legend as reported in Livy<sup>1</sup> is to be believed. From the condition of savage anarchy the Roman State was formed by the genius of Romulus, who gave them laws and monarchy. There are individuals in whom the instinct of sociability is developed, there are others, like Cain, in whom that instinct is clouded over, if it is not killed, by anti-social thoughts and feelings. It may be that all people are born social and later become misanthropic. It may be that the first state of man, as in the garden of Eden, was one of peace and union, and that the period of strife and slaughter was a falling off from an older state, and that people were restored to the ancient ways by the discipline of stern government and organization. We have not the evidence that will let us be definite and certain on this point. But, however that may be, it is decidedly not certain that a period of anarchy, of a war of man against man, was the state of nature from

<sup>1</sup> Bk. I, ch. I, 9, "tum ex consilio patrum Romulus legatos circa vicinas gentes misit qui societalem conubiumque novo populo peterent."

which man was rescued by the foundation of the State. If there is any truth in the theory of evolution, it cannot be that the first man was less social and less intelligent than the last animal from which he is said to have developed. Man could not have been less intelligent and gregarious than the bee or the elephant or the ape which preceded him in the procession of evolution.

#### TRUTH OF THE MATTER

The truth of the matter, according to present evidence, would seem to be that the State originated in either of two ways. The first men found that their individual and social life would be bettered, their needs more efficiently served, their labour more fruitful, if they accepted a common discipline and a common authority. This they did not in the sophisticated, self-conscious manner of Rousseau's primitives. They did not say solemnly one fine morning, "Go to! let us form a State." They just slowly and spontaneously built up the institutions corresponding to a modern executive, judiciary, or an army that are necessary for the life of the simplest State, as did the first English colonists in North America in the seventeenth century, or as the backwoodsmen in Australia are doing to-day. They just built the State as they went along in space or time in peaceful comradeship. On the other hand, there were peoples who could not live at peace with each other, one man's hand being always raised against another. They were of the race of Cain and Ham. Their state of nature was the "rough, rude reign of tooth and claw." And to save themselves from killing each other off like the Kilkenny cats, they agreed to erect a coercive authority and a stern ordering of their lives. It was in either of the two ways, or in both, one after the other, that the first State was built.

#### THE FIRST GROUP

The parallelism which we detected when we were tracing the manner of the origin of the State projects itself into the rest

of the investigation. Man everywhere and at all times is found living in groups. Man as a solitary, isolated individual is a figment of modern philosophic speculation. There is no such person as an individual in ancient society. We must not project the experience of our modern disorganized and dissolving social life into the past. Ancient man lived as a human being only as the member of some social group or other. What then was the first social group through the union of a number of which man founded the State? For, we may agree with Jenks<sup>1</sup> that the State does not come in the earliest stage of history. Here again we are confronted by two theories, which are considered to be alternative but which may prove to be parallel. The question whether the first family was patriarchal, as it is among the ancestors of most or almost all the civilized peoples of history, or whether it was matriarchal, as it is among many contemporary savages, was one of the most hotly debated questions of the schools in the nineteenth century. Maine and McLennan were the protagonists in this controversy. The idea that the State grew out of the union of families formed and ruled on the patriarchal model, with the eldest member of the family on the male side as the ruler, and in which succession was agnatic, is as ancient as political speculation, for we find it in Aristotle.<sup>2</sup> The matriarchal theory is newer, and is based on the ethnological researches of the nineteenth century.

#### THE MATRIARCHAL THEORY

The matriarchal theory is based on the assumption—gratuitous according to the very law of evolution to which its advocates appeal—that what is barbarous must be primitive. It was based on the information available to nineteenth-century ethnologists regarding a social institution which differed from the normal human family known to history. The evidence furnished by the marriage customs and family life of tribes like the Australian Kamilaroi, the American Iroquois, Algonquins and Hurons led the school of McLennan and Morgan to enunciate the

<sup>1</sup> Jenks, *Law and Politics in the Middle Ages*, ch. III.

<sup>2</sup> Bk. I, ch. III.

theory that the original social group was the family clan in which the woman was the pivot of the family system, and descent and inheritance were traced through her and relationship was determined by her. Some, however, have denied the name family to these groups. For some of those were polyandrous, like the Nairs of Malabar or the Todas of Southern India or the Tibetans. And among others the group-marriage prevailed. It will here be remembered that, according to the Roman legend of the rape of the Sabine women, Romulus founded the Roman family only after he had founded the Roman State. Where such a system existed, the clan was the elementary unit held together by the customs of totem and exogamy and by the rule of an elected chief or of a council of elders. Some have likened these to clans, hordes, or hunting packs of wolves or jackals. Even if we grant that this social group is the original because it strikes us as being more barbarous than the other group, the system is not so common or so widespread that we can consent to the generalization called the matriarchal theory. More recent scholarship than that of the school of McLennan has revealed instances of the most backward among the savage tribes living in families modelled more or less on the patriarchal pattern.

Professor Malinowski<sup>1</sup> has carried the war into the enemy's country among the Australian aborigines, and shows us a large number of them possessing the normal human family where the father is the centre of the family system. And Professor Lowie,<sup>2</sup> in a recent work upon primitive society, has cited a large number of cases from America and Africa which go to show that savagery is by no means wholly matriarchal. Professor Malinowski has shown, for instance, that individual marriage and the individual family exist among such tribes as the Kurnai, the Murring, the West Victoria aborigines, the Yerkla mining tribes, the Euahlayis, and others. If sexual licence existed, it was only allowed on rare and ceremonial

<sup>1</sup> Malinowski, *The Family among the Australian Aborigines*, 1913.

<sup>2</sup> Lowie, *Primitive Society*, 1921.

occasions, and was not at all usual and universal, as the matriarchalists taught the nineteenth century to believe. Malinowski quotes the conclusion of Howitt, a great observer of the Australian aborigines, that group-marriage could never have existed as a permanent status.<sup>1</sup> Professor Lowie comes to a similar conclusion, arguing from American and African facts.<sup>2</sup> He shows how far-reaching sexual communism may exist side by side with individual marriage, as among the Bororo of Brazil or the Masai of Africa, or the Gilyuh of the Amur region, and states confidently that "hitherto no evidence has been adduced to show that any people in the world in recent times have practised sexual promiscuity in a manner destructive of the family."<sup>3</sup> He shows that among by far the majority of primitive tribes "both the paternal and maternal sides of the family are reckoned with, not only in vocabulary but in customary law."

#### THE MATRIARCHAL FAMILY NOT ANTERIOR TO THE PATRIARCHAL

There are regions that know not the familyless sib or clan, like Northern California, Oregon, Washington, Idaho, Nevada, Utrecht, with all of the north-western border, in North America, like the Hottentot, the Bushman, and the Pigmy tracts in Africa, and even in places in Australia, where the sib is almost universal. "There is no evidence," says Lowie, "that the sib is more ancient than its invariable concomitant the family." The evidence that he has brought together also supports the view that marriage between single pairs is not absent but common among the simplest tribes, and no ground whatever exists for assuming a condition of ancient promiscuity. His evidence leads him to assert the view that we cannot date matriarchal or matrilinear descent, as he calls it, as being anterior to the patriarchal or the patrilinear system. The patriarchal system does not always go with a higher culture, nor the matriarchal always with an inferior culture. In Australia

<sup>1</sup> *The Family among the Australian Aborigines*, ch. IV.

<sup>2</sup> Lowie, *Primitive Society*, ch. III.      <sup>3</sup> Lowie, *Primitive Society*, ch. III.

the matrilinear Dieri are as good culturally as the patrilinear Arunta. Negro tribes with mother-sibs are equal to their patrilinear fellows in industrial activity and political organization. In North America some matriarchal tribes cultivate the soil intensively, while patriarchal tribes stand lower in the economic scale.

#### MATRIARCHY DOES NOT MEAN FEMALE RULE

Matrilinear descent does by no means connote matriarchy. Mother-right is often accompanied by father-rule. In Melanesia, in British Columbia, and among some of the Negroes of Africa, governmental authority is exercised by male members of the family. Among the Nairs of Malabar, although descent and inheritance are reckoned through the mother, it is the eldest member of the family that manages and governs the *tarwad*. Even among the Kasis of Assam, where women enjoy extraordinary property rights, "politically the sovereignty is transmitted not in the maternal line, but from male to male members, as among the Nair Rajahs of Cochin and Travancore."<sup>1</sup> The Iroquois, according to Lowie,<sup>2</sup> furnish the closest approximation to a matriarchal condition. Among them women nominated candidates for vacancies in the Council of Chiefs, and had the right of admonishing and impeaching an unworthy chief-elect, but no woman had a place in the supreme Council of the League. Among the Pueblo Indians women have no voice in governmental affairs. Modern research, therefore, has upset the theory that the matriarchal family or the familyless clan was the original institution from which the State arose. And Aristotle and Maine are once more justified. The matriarchal theory is both in date and character mid-Victorian.

#### THE CONCLUSION

The conclusion of the matter cannot be better summarized than in the words of that great English historian, Frederic

<sup>1</sup> Lowie, *Primitive Society*.

<sup>2</sup> Op. cit.



## THE MAKING OF THE STATE

William Maitland, whose brilliant generalizations and judicious conclusions were based upon a vast store of knowledge. He says:<sup>1</sup> "A law which deduces that mother-right cannot come after father-right, or that father-right cannot come after mother-right, or which would establish any other simple sequence of States, begins to look exceedingly improbable. Our cases all told are not many, and very rarely indeed have we any direct evidence of the passing of a barbarous nation from one state to another." The conclusion for us is that most of the States known to history grew out of a union of more or less patriarchal families, that a few, very few, come out of clans which knew not the normal human family. There has been a parallel development, but the patriarchal line is thicker and longer.

### NOMADISM

This phenomenon of parallel development we find recurring in regard to another question that is asked whenever the origins of the State are discussed. Seeing that the normal condition of the State is fixed settlement on some piece of territory, and seeing that most of the peoples that have founded the States of history are not sprung from the land of their settlement, but have drifted thither after many wanderings, and in view of the fact that most of the wandering races are inferior in civilization and political development to the sedentary peoples they have conquered, some students of sociology have formulated the law that there is a nomadic stage through which all peoples have gone before they settled down into stable State-dom.<sup>2</sup> Men were nomads first, and then when they grew tired of wandering or the inclination to stop was strong enough they called a halt and settled down. Nomadism is put forward as a necessary and universal stage in political evolution. This theory is also sometimes stated in the form that the pastoral stage preceded the agricultural.

<sup>1</sup> Essay on "The Body Politic," in *Collected Papers*, Vol. III.

<sup>2</sup> For a recent manifestation of this theory see H. G. Wells, *The Outline of History*, ch. XIII, "The Races of Mankind."

## THE THEORY OF NOMADISM

The theory of nomadism is based on many facts of history. Most of the peoples of history have gone through this experience. The Aryans, who founded States in Northern India on the ruins of the more ancient polities of Dravidians, drifted into the country from the West. The builders of the empires of Assyria and of Egypt, of the kingdoms of Sumeria and Accadia in Mesopotamia, came from the neighbouring deserts. The Medes and the Persians were the pastoral tribes of the little plateaus that lie between the great Central Asian Highlands and the Syrian desert. The conquerors and makers of China were the Tartars, the Mongols and the Manchus, the shepherds of the steppes. Mediaeval India was largely made by the conquests and settlements of the Mongols, who became the Mughals of India. Turning to the empires of the American continent, we find that both Peru and Mexico were founded by people that came from elsewhere. Native legends attribute the founding of the kingdom of the Incas either to men white and bearded who came from no one knew where, or to two children of the Sun Mancocapac and his sister wife, expressly sent out by a pitying heaven to civilize the country. Mexico was formed by successive invasions of the Toltecs, the Chichimecs and the Aztecs, who all came from outside.<sup>1</sup>

Most of these ancient conquerors and founders of States were in what is known as the pastoral stage of civilization. The tending of cattle, which was their main source of wealth, was their occupation. They lived by the sweat of the brow of the more settled and more civilized peoples whom they subdued. They had no settled homes, and wandered from land to land as they liked till they settled down somewhere. The nomad is a wanderer on the face of the earth. What Vaughan says of the spiritual restlessness of man is applicable to the physical restlessness of the nomad.

<sup>1</sup> Letourneau, *L'Évolution politique*, ch. V.



“He hath no root, nor to one place is tied,  
But ever restless and irregular  
About the earth doth run and ride;  
He knows he hath a home, but scarce knows where.”

From this frequent fact of history has been deduced the theory of a necessary and inevitable nomadism. Because many peoples have wandered before settling down, it is argued that the nomadic stage has preceded the agricultural or settled stage in history. But it is doubtful whether facts will bear out any such theory of political evolution. It is true that most of the peoples that have made history were once nomads. But we cannot say that they were so from the beginning. They were so only when history introduces us to them. As Wells puts it, Nomadism, like civilization, was developed. They might have been settled at first and become unsettled afterwards as a result of famine, or the drying up of water-sources or of an epidemic. Cain was at first a tiller of the soil, and then was driven to the road by his crime against social life. The *wander-lust* may attack nations as well as individuals. Many of the so-called nomads knew some cultivation. They cultivated with the hoe if not with the plough like regular agricultural peoples. In historical times peoples have broken up their homes and taken to the road.

Moreover, if nomadism were a stage in political evolution, it must necessarily and generally lead to the next stage. But there have been peoples who persist in being nomadic in spite of all temptations. The Bedouins of North Africa, Tartar tribes in Central Asia, the Red Indians of North and Central America, the Pampas nations, as they have been called, the Patagonians, the Araucanians and the Charruas, who ride about the pampas of South America to the present day, still live the nomadic life they lived centuries ago. Although inducements to change their mode of life in the form of wealth and civilization have been flaunted in their faces, they have refused to give up their free and wandering life. Sometimes, whether a people shall be nomad or not is settled for them by their

*milieu*. Chaldaeae, especially the low country bordering on the sea, its land divided into separate districts, is not propitious, M. de Morgan<sup>1</sup> points out, to nomadism. For a similar reason Greece pegged down the tribes that wandered into it into a settled life. It may be that the cold and gloom of the ice-bound lands of the glacial period of history drove the nomads, as it probably did the Aryans of the earliest times, to seek warmer and brighter and more habitable parts. To some peoples the agricultural condition has been the *terminus a quo*, to others it has been the *terminus ad quem*.

The fact of the matter seems to be that some people are born nomads and live so ever afterwards, others are born nomads and shuffle off their nomadism early in their history; yet others are born tillers of land, and continue to be so, or lapse into nomadism, and remain there permanently or recover their original attachment to the soil. The story of Cain and Abel symbolizes this parallelism in political development. Nomadic and agricultural peoples have, like Cain and Abel, existed side by side from the beginning of time. Not all peoples have gone through the nomadic experience, nor have all nomadic peoples taken the next step forward.

#### TERRITORIALITY BEGINS THE HISTORY

However that may have been, the life of a people in the State begins only when it settles upon a certain piece of territory and determines to live there ever afterwards. A people must strike roots in the land in order to form a State. Agriculture marked the beginning of the State. It made possible the settlement of nomadic peoples on some piece of territory by converting them into tillers of the soil, or by enabling them to live on the produce of the labour of others. It fixed the State in its natural groove. In small or large unions called tribes, formed as in the vast majority of cases out of individual families joined into larger groups called clans, or out of familyless clans,

<sup>1</sup> *Les Premières civilisations*, ch. VII.

but in either case bound only by ties of kinship, most peoples settled down on some piece of territory and began their political existence. It was thus that the history of the State began.

#### DATE OF THE ORIGINS

For the beginnings of that history we need not go back to the Ice Age. Although man existed then and in the Stone Ages that followed, it was not till the discovery of metals, which brought about a quicker economic life, that large groupings of people were possible. The apparition of metal, says M. de Morgan,<sup>1</sup> was the origin of the constitution of States. If we must date this historical beginning of the State, and civilized man is now reckoned by history to have appeared earliest in the valley of Mesopotamia, we may put it down to the third millennium B.C.

#### THE STATE, SMALL AT FIRST

The first tribal communities were small, like those that founded the first polities in Mesopotamia, as the primitive Sumerians, divided among the numerous towns and ruled by petty kings called patesis before they fell an easy victim to the Akkadians, who consolidated them into a larger State, or like the small States of Dahomy and Ashanti in Africa, like that of the Havas of Madagascar, or like those of Khiva and of Bokhara and Khorasan of the Turkomans, like Tibet of the Lamas, or like the Aryan and Dravidian States of ancient India, or the Rajput States of Central India, or like the ones of Siam and Cambodia in Asia, or like those of Papua and Fiji in Melanesia, or of Samoa or Sandwich or Tahiti in Polynesia. Or they were large, like those that by the forced incorporation of smaller clans or tribes or by the way of confederation founded the first great Asiatic States of Akkad and Egypt and Assyria and Media and Persia, or the great American Empires of Peru and Mexico, and of China and Japan in the Far East.

<sup>1</sup> *Les Premières civilisations*, p. 473.

## WAR AND CONQUEST EXPAND THE STATE

But whether the States were small or large, the political evolution was the same. War and conquest were the usual way of political integration and expansion. War seems to be natural to primitive man. Of all sentient beings which live a social life, man seems to be the most aggressive, more aggressive, for instance, than the bee or the ant.<sup>1</sup> It was conquest that brought one of the first, or rather the first, great State of history, Akkadia, into existence, as it has brought about the formation of most of the States of modern history. War was the hammer with which the modern State was forged. We are depressed and despair at the persistence of war in spite of our civilization and our culture and the magnitude and cruelty of the destruction of modern warfare. But the wars that inaugurated the State, a few of which only are recorded in history, were legion. The wars of the Papuans, the New Zealanders in Oceania, the Bushmen, the Kaffirs, the Hottentots, the Monboudos in Africa, of the Patagonians and Guaranis, the Red Indians of America, of the ancient Assyrians, Mongols and Mexicans, were as numerous as they were bloody, more savage than the fights of wild beasts, for many of them were accompanied by cannibalism. These wars of antiquity or of savagery are only a memory now, but even as a memory they singe the imagination as one reads about them. But it is in the course of these wars that the State was formed and came of age. It is doubtful whether but for these wars the States of Peru or Mexico, of Persia or Assyria, of China or any of the modern States, would have come into existence. Peace has made Arcadia, but not Akkadia.

The exigencies of war and the need of victory converted many of the primitive tribes from small, loosely held communities into large, well-bound States. That is how the loosely held republican tribes of pre-Buddhist India, like the Angas, the Sakyas, the Vajjians, or those of Red-Indian America, of

<sup>1</sup> De Candolle, *Histoire des sciences et des savants*.

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New Zealand, of the Sandwich Islands, were swept out of existence by the need for strong rule wielded by a single monarch. It is war, as Jenks<sup>1</sup> points out in the case of mediaeval peoples, led by the evidence furnished by Fustel de Coulanges, that converted tribes and clans and leagues of them bound and separated by kinship into States founded on obedience. It was under the impulse of war that the Franks, who comprised the Salians, the Sicambrians, the Ampsivarians, Chamavians and Ribuarrians, founded the French State, War converted the nobility of blood into a nobility of military service. War converted Clan into Class, and thus made for real political unity. Such a transformation was witnessed in the lifetime of the older generation of people still living in India when under the influence of British administrators like Sandeman tribes of Baluchis with their tumondars,<sup>2</sup> and vesh,<sup>3</sup> with their jirghas and razzias, settled down into Statedom.<sup>4</sup> The transformation was not confined to small tribes such as these. It worked with still greater force among the larger peoples that wanted closer integration and greater consolidation.

## CONQUEST SHAPES THE LARGE STATE

Not only the size of tribes but the form of their internal organization was changed in this process. It was conquest that destroyed, as Trevelyan<sup>5</sup> points out, the kinship of the Anglo-Saxon tribes, and substituted more general and wider-embracing bonds of political union. From being more or less republican communities with a vague democratic government or gerontocratic rule, they became king-governed States. This substitution of the personal rule of a man for tribal democracy, tempered by the supposititious wisdom of a Council of Elders, was a great step forward in the progress of the State. For, as Sir J. G. Frazer says, no human being is so hide-bound by

<sup>1</sup> Jenks, *Law and Politics in the Middle Ages*, ch. III.

<sup>2</sup> Chiefs.

<sup>3</sup> Periodical distribution of land.

<sup>4</sup> See Thornton's *Life of Sir Robert Sandeman*, p. 111.

<sup>5</sup> *History of England*.

custom and tradition as your democratic savage.<sup>1</sup> Organization for war led to the building of the first administrative machinery. The elected chief, obliged to abide by the decision of the Council of Elders, gave way to a more or less hereditary monarch, who was allowed to wield vast power.

#### DIVINIZATION OF PRIMITIVE AUTHORITY

To strengthen the power of the primitive monarch he was frequently divinized. The monarch was endowed with divine attributes so that he might all the better hold the State together. The kings of Loango in Africa were credited with the power of ruling the elements.<sup>2</sup> The chief of Dahomey could be approached by his subjects only on all fours. The petty chief of the Natchez Indians, as the great Inca of Peru, the Son of Heaven, and the Emperor of Mexico were divine personages and the object of religious worship. The Emperor of China was also the Son of Heaven. The king of Egypt was a god on earth and was literally adored. The first kings of Sumeria and Akkadia were also priests. The first temples were also the first centres of government. The Sumero-Akkadian temple was also the treasury, the arsenal, the secretariat of the patesis or kings governing the Akkadian Empire.<sup>3</sup>

#### FIRST KINGS PRIESTS

Although the first kings were priests, it is one-sided, Gierke<sup>4</sup> says, to derive, as Frazer and Wells do, the powers of the king from that of the priest. It is true Sir J. G. Frazer<sup>5</sup> has adduced innumerable instances of peoples among whom the king was also priest or medicine-man. But few instances has he adduced of priests or medicine-men becoming kings on account of their magical powers. In the vast majority of cases the kings were endowed with the powers of the priest and the wizard. The primitive ruler had to be more a war-chief than

<sup>1</sup> Sir J. G. Frazer, *The Golden Bough* (abridged edition).

<sup>2</sup> Letourneau, *L'Évolution politique*.

<sup>3</sup> M. de Morgan, *Les Premières civilisations*, ch. viii.

<sup>4</sup> Gierke, *Das Genossenschaftsrecht*, Vol. II.

<sup>5</sup> In *The Golden Bough*.

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a medicine-man or priest.<sup>1</sup> But the divinization of the ancient monarch was necessary for grafting political obedience in the minds and hearts of these ancient peoples just emerging from barbarism, which may have been arcadian or anarchic. And as Lyall<sup>2</sup> points out, the primitive chief was as likely to be a real hero deified, for the founder of at least one Rajput State, an historic personage, is freely worshipped by his clan to this day. The despotic power of the monarch, which scandalized and pained the nineteenth-century observers of the politics of the unspoilt barbarians of Africa, Australasia and the Far East, was necessary to keep infant States from breaking.

### OTHER DEVICES STRENGTHENING THE PRIMITIVE STATE

War and conquest led to the invention of other devices that were used for the development of the primitive State. Adoption and slavery were the means of increasing the population of a State founded on kinship. Feudalism was not the invention of the Middle Ages of Europe, but is found all over the world, from China to Peru. In countries so widely separated as New Caledonia, the Sandwich Islands and Tahiti, Madagascar and Japan, Abyssinia and China in the reign of Hoang-Ti, before it was killed by the rule of the lettered bureaucracy of the Mandarins, a feudal organization of society prevailed. Feudalism rendered to the primitive State the same kind of service that it rendered to the State of the Middle Ages.

### GEOGRAPHY AND THE ANCIENT STATE

Under the influence of these forces, agriculture, war and conquest and religion, and with the aid of such institutions as slavery and feudalism, it was that the first States were founded. States small or large thus came into being. Their size was determined mainly by the geographical features of their land and by the peoples' powers of expansion and government.

<sup>1</sup> For a corrective to Frazer and Wells see Ihering, *Geist der Römischen Rechts*, Vol. I, Sect. 17, where he shows that the primitive Roman king was warrior rather than priest.

<sup>2</sup> *Asiatic Studies*, First Series, ch. III.



Sumeria and Akkadia were mesopotamic States. Assyria went beyond the doab of the two rivers, impelled by its military interests. Egypt expanded only along the Nile. China filled the valleys of the Yangtsekiang and the Hoang-Ho up to the mountain walls of Central Asia. The coast on the west and the valleys on the east dominated by the Andes invited Peru to be an empire, as did the vast tableland of Mexico undulating to the sea. The typical African State is a small State, the climate and the low energy of the people being the main causes. Ashanti and Dahomey and Uganda are all small States, not to speak of the less well-known ones peopled by the Monboddos, the Barbaras, the Kaffirs, the Kiamas and a host of others. Similarly ancient India was dotted with a number of small States which all its Asokas and Chandraaguptas could not weld into one. The size of the States that have been formed by the union of ancient tribes, large or small, varies from that of a small State like Dahomey to that of an empire with its several provinces and its numerous subject races, like that of the Incas or of the Celestials. But they all followed the same path, although they did not all go the same distance. All of them through war and conquest or rarely peaceful confederation, with the aid of religion or superstition, as Sir J. G. Frazer would call it, and slavery or feudalism or some elementary system of administration, entered the threshold of the State.

#### TRIBALISM DISPLACED BY STATEHOOD

Tribal life in one or other of these ways was displaced by a more political life. But what is it that marks the transition from tribalism to Statehood? When does a people cease to be a collection of tribes and become politically consistent? What are the marks which distinguish the superior from the lower stage of political existence? The most important are there. But they are not all to be found everywhere, nor in all places are they equally developed. But the more these marks are pronounced the more advanced is the development of the State. First of all, the clan formation gives way to the division



into classes or castes. Society became divided into groups, nobility and common people, freemen and slaves. The family system is a little more free. Marriage, from being rigidly exogamous or endogamous, became free and open between all citizens, subject to rules of consanguinity and class or caste differences. A hierarchy of classes and corporations distinguish the social organization of a State from that of a tribe, as among the ancient Japanese, where a strong military landed nobility, the Buké, standing at the head of the Minké, or general public of farmers, artizans and tradesmen, ruled the country in the name of the figurehead, the Mikado, or later the Shogun. The tribe becomes fixed, and territorial tribalism replaces merely racial tribalism, as, for instance, when the Mundas, after age-long wandering, settled in the Jharkand of Chota Nagpore. Blood-relationship as the bond of union within is replaced by institutions like those of feudalism, which welds a number of tribes together. Feudalism has consolidated tribes into a State from the time of Akkadia up to our own, as in Rajputana and Central India. A village system effects this transition sometimes, as among the Mundas and Oraons of Chota Nagpore consolidated into *pattis*, and ruled by elected *Mankis* or *Pahans*.<sup>1</sup> When tribalism disappears, towns begin to be founded, and tend to increase in number and importance. The machinery of a central government is put up. Chiefship or kingship is continuous and tends to become hereditary, as in Rajputana<sup>2</sup> where the chief is supposed to be the nearest legitimate descendant in direct male line from the founder of the State according to the genealogy of the tribe. Institutional loyalty begins to be substituted for personal loyalty. Custom is fast developing into law. Legislation takes the place of tradition. Taxation takes the place of voluntary contributions. The saying of the Kallars of Madura of the seventeenth century, "that while the heavens supplied them with rain, their cattle ploughed the land, and they cultivated it, there was no possible reason

<sup>1</sup> *The Mundas*, by S. C. Roy. *The Oraons*, by S. C. Roy.  
<sup>2</sup> Lyall, *Asiatic Studies*, first series, ch. VII.

why they should pay taxes,"<sup>1</sup> could be true only of primitive tribalism. It was with all or most of these marks that the Tribe developed into the State.

#### TRIBALISM SOMETIMES PERPETUAL

Not that the transition from the tribe to the State was inevitable. Numbers of tribes have always been tribes. The tribes that founded the States of Peru and Mexico were once like the Red Indians, that still refuse to enter the life political. India still holds a number of tribes, settled and peaceful and agricultural, whom all the revolutions of India and even the advancing tide of British rule has not touched. The Nagas, the Mundas and the Oraons, the Kols, the Santals, the Garos and the Khasis and the Khonds are survivals of the old tribalism that escaped the influence of Aryan conquest, Hindu caste and Hindu dharma. Why do some tribes form States while others do not? It is a mystery which in the present state of our knowledge it is not easy to resolve. It may be that isolation and inaccessibility, as was probably the case with the tribes in India, kept them away from the main stream of political development. But it may also be that the advancing tide of civilization drove politically shy people to inaccessible mountains and forests. We do not know, but the fact is some peoples have raised themselves from the tribal stage to the stage of the State, while others have throughout history remained tribes. As there are individuals who remain children all their lives, so there are peoples who remain children in politics throughout history.

#### ISOLATED DEVELOPMENT OF STATES

The history of the State as we have told it so far is not the history of a single polity that has advanced in size and shape from age to age. We cannot trace the history of the State as if it started from small beginnings in Sumeria and Akkad and Elam (for we may take it from M. de Morgan<sup>2</sup> that the

<sup>1</sup> Quoted in Nelson's *Madura*, Part II, p. 45.

<sup>2</sup> *Les Premières civilisations*, ch. VII.

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first States of history appeared in the fertile and favourable soil of Mesopotamia), spent a vigorous youth in Assyria, Media and Persia, attained maturity in Egypt, Peru and Mexico, sank into old age or second childhood in India and China, from which it was saved by a resurgence of life in the Greek States, the Roman Empire and the mediaeval and modern States of Europe. It is enough to state such a historical sequence to show its absurdity. In a wise and for long periods of time there can be a history of States, not a history of the State. It is as difficult to write a history of the State till there has been a certain connection and communication between States or a certain degree of influence of States upon each other, and a certain measure of dependence of one upon another, as it was to write a history of the world till the world was brought together by modern inventions, discoveries and colonization and conquest. The doctrine of special creation has been asserted of man, but it has to be asserted of States. Each of these States from China to Peru was born, grew up and died or lived independent of the others. If there has been progress, that progress has been within each State. Peru did not influence Mexico nor China Japan, nor Egypt Persia in any important characteristic of internal organization. If there is similarity, it has been due, till modern times, not to diffusion of ideas and institutions, but to common needs and circumstances calling for similar institutions. The State did not develop from infancy to maturity, from State to State, but from age to age in each State. Neither in size nor in internal organization has there been development in chronological sequence. The small States of Africa or India did not grow to be the medium-sized States of Egypt or Media, or Peru to become the vast kingdoms of China or Mexico.

### ANCIENT STATE ORGANIZATION

Within each State, whatever progress there was in antiquity, happened largely in regard to the size of the State, and very little in regard to internal organization. Not that there was no

progress at all in the internal organization of the ancient State. There was the progress, for one thing, that marked the transition from the tribe to the State. But the progress was not continuous and developing. We may assert one type of government for almost all the States of ancient times. The characteristic feature of the government of the most ancient Asiatic monarchies, according to M. de Morgan,<sup>1</sup> was the division of the kingdom into three parts, one portion vaguely defined forming the direct appanage of the monarch, another zone more or less extensive of tributary kingdoms, and beyond these the portion that formed a sort of hunting-ground for wealth and slaves. The collection of tribute was the main duty of the king; the parts of the State existed and were exploited for the sake of the metropolis where the king lived.

#### THE SATRAPIAL SYSTEM

On this system of government which prevailed among the ancient States of Mesopotamia, the satrapial system of the Acheminds of Persia (561-330 B.C.) marked an advance. For the satraps were not feudatory nor tributary kinglets, but provincial governors appointed from time to time by the king and responsible to him, and supervised by royal inspectors sent out by the king. While the satraps commanded the provincial troops, the forts were garrisoned by other troops directly responsible to the central authority. The Persian system in its consolidation of central authority certainly showed itself superior to that of the Akkadian or the Egyptian. And Darius contributed this excellence to the Persian system, that for the first time in antiquity he put some order and regularity and rule into the collection of taxes. But for all that the political integration of Persia was not great. What are we to think of the government of a State through which an alien ten thousand marched through the breadth of its land without anyone saying them nay?

<sup>1</sup> *Les Premières civilisations*, ch. VIII.

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### OTHER ANCIENT SYSTEMS

Other Asiatic States exhibited some other marks of governmental progress. Phoenicia and Carthage, whose governmental organization was much more complete and efficient than that of the Asiatic States, failed to reach the high destinies of a State, as they were organized only for commercial profit. For all its suffetes and assemblies Carthage was like one of the modern East Indian companies in the guise of a State. Attempts at improving their internal organization there were among the great States of antiquity. But they were incompletely or improperly organized. The Chinese State was organized as if it were a family, the State in India as if it were Society, in Peru as if it were a community. The progress in internal organization in these States was not in keeping with their expansion in size. But it is not growing like a tree that doth make States better be. The very fact that most of these States went down before the impact of other States with other forms of organization shows that the organization of the former was too simple, too rigid, or too mechanical to preserve them from extinction. If the experience of these States were the only one through which the State went, it would have gone ill indeed with the State. But fortunately it was vouchsafed another and richer experience.

### THE GREEK EXPERIENCE

In a corner of the world, away from the stream of political tendency which we have been following, sea-girt and canopied by a serene and temperate sky, lived a people who went through political experiences not given to those that have so far come up before us. They were the Greeks. The State formed by them was utterly different from the States formed by the others. While these latter were large and extended over miles and miles of territory, the Greek State was very small and confined to an area of a few square miles; while they ran over a number of cities and villages, it concentrated its life in a single city;

while they tended towards indefinite expansion, it put a severe restraint upon itself, and extension meant generally extinction for it. The Greek city-State was a miniature State. But it made up for its small size by the rich variety of its political experience. Refusing to be tempted by the allurements of size, it directed its attention to the development of form. To the Greeks a large State was inconceivable, monstrous, barbarous. When Philip of Macedon went out to build one State of all Greece, Athens organized and led the opposition to it, even to the extent of sending emissaries to Persia, much more the enemy of Greece than Macedonia, with a view to preventing the formation of a large united Greece.

#### THE CITY-STATE

The Greek city-State specialized in internal organization. It built up group associations like the demes and phratries of Athens to strengthen its social solidarity. It was the city, Gierke<sup>1</sup> says, that was the first and in its kind the highest form of group, and in which the idea of the true State was first realized. The small size and homogeneity of the city-State conduced to the social consolidation and integration of peoples. While in the State before and outside the Greek State people were loosely bound, in the city they became one and compact. It was in the city that the State first became a person. It was in the city that the State first became a real political being. The two ideas of unity and commonalty were together first realized in the city-State. How much the social integration of peoples is strengthened by the number and vigour of cities is proved by the superior integration of countries influenced by the Greek and Roman traditions of city life to that of countries like Russia and India, which have suffered in other ways also, from the lack of cities and towns. While the State before and outside the Greek world was a mere "strung-along" State, the Greek State was by its government rendered organic and integral.

<sup>1</sup> *Das Genossenschaftsrecht*, Vol. II, Sect. 33.



Taking advantage of its small size, the city-State made frequent efforts to perfect its internal organization. It tried all kinds of experiments in the art of government. It went through the whole gamut of political experience. It tried monarchy, aristocracy, oligarchy, tyranny and democracy. It specialized the functions of government, and separated the legislature from the judiciary, the judiciary from the executive. The doctrine of the separation of powers is implicit in Aristotle.<sup>1</sup> The principle of popular election as an instrument of government was realized in most interesting forms, culminating in the most daring of them—election by lot. Direct democracy was tried to an extent which would be the despair of modern times. Discussion of things political was the order of the day in the Greek city. There was nothing sacrosanct in matters political. Neither tradition nor custom nor religion stood in the way of the political experiments of the Greeks. Reason and utility were the tests by which they judged every political institution. In the Greek world, not the caprice of an individual, but Law was accepted as the bond of unity and the ritual of government. The Greeks set up States "in which the laws held sway." They set up the first Rechtsstaat of history. As Gierke<sup>2</sup> says, "the Greeks endowed Law with all the attributes of majesty and placed it above the ruler and even above the people."

The city-States of Greece were distinguished by their variations in regard to principles of government. Although all of them believed in the uniqueness and absolute sovereignty of the State, they differed in their view of the hold of the State on the individual. There were individualistic States like Athens and socialistic States like Sparta. The Greeks tried all the possibilities of untried being in the art of government and political organization. It looked as if the Greek State was purposely small in size, so that all this incessant and interesting experiment in the art and business of government could go on with impunity. The Greek Street was reduced in size so that it could gain

<sup>1</sup> Bk. IV, ch. XIV.    <sup>2</sup> Gierke, *Das Genossenschaftsrecht*, Vol. III, Sect. 3.

in strength. It lost in extension in order to gain in intensity. It was small in order to be self-governing.

While the State outside the Greek world simply grew in size and population, and showed how it was possible to form large States for the elementary political training of large masses of people, the Greek State showed the world how to bind and hold the State together, how to make government lasting by making it popular, how to specialize and separate the different functions of government, how, in a word, to organize the State so that it could hold and endure. While those other peoples, the Akkadians, the Egyptians, the Assyrians, the Mexicans, built like giants, the Greeks worked like artists. While the former threw up great pyramids and pylons of States, the Greeks built cameos and *chefs-d'œuvre* of the State. The Greeks proved for the State how

“In small proportions we just beauties see,  
And in short measures life may perfect be.”

The Greeks chiselled and polished and burnished the State, so that in their hands it became a thing of beauty and a joy for ever.

#### THE GREEK CONTRIBUTION NECESSARY

All this artistic work on a small scale, which has been often thrown up against the Greeks as a byword and reproach, was necessary in the interests of the State. If the State was to stand and hold anchor, its internal structure and organization had to be developed and perfected beyond the point reached by the Egyptians, the Persians, or the Chinese. The fate of these people showed that their States fell because their internal organization was too weak and defective to support their size. They would stand as long as they were left to themselves. But the moment they were confronted by the offensive of people better organized than themselves, even though these latter were a handful, they crumbled up as Egypt before Alexander, Mexico before Cortez, Peru before Pizarro, or the States of India before the European traders. Either because they had not the native



energy, or on account of their philosophy of life, or on account of their size, they could not perfect their internal organization. The thing had to be done on a small stage. That stage was the Greek city-State, and the Greeks played their part almost to perfection. The State which outside Greece had simply grown in physical size and shown how far its limbs could stretch, went to school to develop its character and its powers among the Greeks. The State that had in the pre-Hellenic times been running about like a wild colt, throwing its limbs about in the joy of living, went into training among the Greeks. It had learnt to live outside Greece, it was to learn how to live well among the Greeks. From the dark jungles and overwhelming spaces of the East, the State escaped and entered into the bright and pleasant fields of the Greek city. Not that the Greeks were perfect politically. They were too narrow in their vision and their sympathy. Greek political civilization was reared on the hatred of the stranger and on the shoulders of the slave. But it had to be narrow for its work, which was to teach the world how the State should be organized and built if it is to withstand "the shocks and shafts of outrageous fortune." If the lesson was to be taught well, it had to be taught to a small number of pupils. The city-State was the small classroom that made for real political teaching and development.

#### THE CITY-STATE NOT ENOUGH

The Greek State was not, however, the last thing in politics. Its smallness, which was the condition of the great service it rendered to the idea and institution of the State, was a defect. It was not on account of its eventual extinction by larger States like Macedonia and Rome that its smallness has to be deplored, for that fate has befallen even the large-sized State. But its fundamental defect would have remained even if Greece had never been conquered. This defect was the narrow embrace of the Greek city-State. It believed only in self-development, and not in the development of the world. It worked only for the progress of Greek peoples at the most, and dismissed the

rest of the world as barbarians and incapable of political education. It did not work directly for the civilization or progress of the world. It served civilization only by standing out as a beacon light and shining exemplar in cold isolation from the rest of mankind. It was not the guide that took the world by the hand and led it by the paths it had made for itself towards perfection.

#### DEFECTS OF THE CITY-STATE

The Greek city-State was not even perfect within its limits. Its small size was a bar not merely to the expansiveness of the State, but to the expansiveness of the individual. Its small size made it afraid of personality. It could not help ostracizing its leaders. The individual could not develop his liberty, his initiative, his personality to the height of his powers. As Gierke<sup>1</sup> says, the Greek State, although it served the cause of political liberty, did not promote general and lasting freedom, because it forgot individual freedom. Man as well as his institutions were cramped within the Greek city-State.

For a State to serve the progress of the world and the cause of civilization and culture, it was necessary that the expansiveness which was the quality the State had acquired before and outside the Greek world should be combined with the perfected machinery of the Greek State. Only a State that would place no limits on its extension except those dictated by prudence and a sense of proportion would be able to serve the political education of the world. A parochial people like the Greeks could not have done the work which might have been done by empire-builders like the Medes, the Persians, the Chinese and the Mexicans. These non-Greek peoples themselves could not have done it, for they had not the gifts and the opportunities of perfecting the internal organization of the State that the Greeks had. The two streams of political life had to meet and mingle if civilization and progress were to endure. And they met in the next great period in the history of the State, which is filled by Rome.

<sup>1</sup> *Das Genossenschaftsrecht*, Vol. III, Sect. 3.

## THE MAKING OF THE STATE

### ROME'S GIFT

The city-State, whether it sprang from the soil or was imported from Greece, filled the Italian peninsula as it did the Greek. But Italy wore its political rue with a difference. On account of the physical configuration of the country, Italy not being so broken up by mountains and seas as Greece was, and on account of the superiority of one of its peoples, the country and the cities were absorbed one after the other into one State. Athens had been only first among equals, and its pre-eminence was recognized fitfully and as a mere matter of precedence. But in Italy Rome was first and the rest nowhere. It conquered one city after another and one people after another—the Sabines, the Etruscans, the Celts, the Samnites and a host of others—and incorporated them in the State it was building. With its wonderful citizen army, which was kept in training by its incessant attacks on its neighbours, it advanced as sure-footed as destiny. It brought every now and then new peoples, civilized, semi-civilized and savage, within the jurisdiction of its magistral system of political discipline, government and law. Very soon in its history it had broken the bonds of the city-State, and within three centuries of its foundation about 750 B.C., had left the confines of Italy far behind it. The treaty of 510 B.C. with Carthage was the first sign that Rome was looking beyond Italy for the *milieu* of its activity. Competitors for supremacy on the Mediterranean, like Carthage and Pyrrhus, it had suppressed by the end of the third century B.C. It not only conquered new peoples but organized them. Without giving up the city as its unit of government, it expanded the State beyond limits that were not dreamt by the Greeks, and would certainly have been repudiated by them.

### THE PROGRESS MARKED BY ROME

The Roman State starting as a city-State had burst its shell and recovered the ancient tradition of the large and expanding State. But it was not merely in size that it developed. It knew

all the tricks of political organization that the Greeks had known—popular assemblies, separation of powers, an elected and several magistracy, and a few more. Its senatorial government, in which the functions of deliberative and executive bodies were harmoniously and efficiently combined, and is the first example of a Council of Elders charged with the government of a great empire, was its own invention. So were the tribunician power and the three popular assemblies equally competent and equally powerful. The Roman government was full of checks and balances so frequent that it was saved from deadlock and breakdown only by the utter good sense of the governors and the governed.

The Roman system was an improvement on the Greek system in that it was a mixed government, in which the principles of monarchy, aristocracy and democracy found a place and tempered and completed each other. Rome founded an empire which was more lasting and beneficent than the Athenian or any other that had gone before it. It organized an empire that did not merely collect tributes and soldiers from its subject populations as did the Persians, the Assyrians or the Mexicans, but that gave equal laws and equal citizenship to the peoples that were brought under its rule. Not that Rome was so prodigal in this grant of citizenship as to throw it to every people as soon as she came in contact with them. For instance, in 340 B.C. Rome refused citizenship as well as political equality to the Latins, their allies, although this decree of the Roman Senate led to the Latin War.

#### ROME AND THE POLITICAL EDUCATION OF EUROPE

The great service that Rome rendered to the political development and education of the world was that it passed large masses of savage and semi-savage tribes through the yoke of political discipline and taught them the way of life of the State. Rome was the political teacher and organizer of the peoples of three continents. It civilized scores of tribes and taught them the arts of peaceful politics.

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Its work for civilization and progress was immeasurably greater than that of the Greeks. While they hoarded and jealously guarded their civilization and culture, Rome threw her gifts of government with both her hands to the peoples whom she conquered. The size of the Roman State organized by her genius helped her to achieve this task. Like the States outside the Greek world, it was large and widespread. Like the Greek State, it was efficient, broad-based and solid and compact in its organization. The two streams of political development had met, and it looked as if the last development of the State had been reached in the Roman Empire.

### ROME'S FALL

The Roman Empire did not last. It fell not only by the weight of its own mass, but because its internal organization broke down. Probably the organization broke down under the weight of the mass. It had become too large to last, and so broke into two before it broke into pieces. It was obliged to turn traitor to its own idea of unity. And States, like individuals, fall irrecoverably when they are false to themselves. Even in spite of the division the Roman empire could not last. Its government was over-centralized. Interest in government had departed from the parts, especially on or about the circumference. Roman citizenship meant little or nothing to the people of the empire, as its political rights could be exercised only at the capital. Taxation was the main source of contact between the provincial and the central government. The Roman frontier offered a broad target, and was too extensive to be guarded by an imperial army. The Roman Empire fell because it could not hold what it had taken.

### ROMAN EXPANSION TOO GREAT

It was good that the Roman State expanded beyond the prison bars of the Greek city. But it looks as if it had expanded too much for the real progress of the world. A great empire training large numbers of savage and semi-savage tribes in the ways

## AN OUTLINE HISTORY OF THE STATE

of law and order no doubt renders a service to the cause of civilization and progress. But the training may go a little too far for real progress. Imperial sway may grind out the individuality of peoples and build the world on a single pattern. Roman government broke down under the weight of the Roman empire. The history of the Roman empire showed that while expansion beyond the limits of the Greek city-State was necessary for progress, the expansion should not have gone as far as the Roman Empire. A middle way had to be found if the State was to endure and thrive, and that middle way was found in the State of the Middle Ages of Europe.

### THE MEDIAEVAL STATE

When the Roman Empire fell the peoples of Europe were thrown, as it were, into a melting-pot. They began to arrange and re-arrange themselves. A series of conquests and reconquests was let loose upon Europe. Out of all that welter and pain a new State was born. The Greek State had been weighed in the balance and had been found wanting. The Roman State had been weighed in the balance and had been found over-weighted. The new State, if the State was to live and flourish, had to strike the mean between the two. It had to be larger than the Greek State and not so large as the Roman. The exact limits of the new State were determined by geography and language. The Roman State had overridden physical and linguistic frontiers. They were to recover their sway now. The new State was to be built on separate geographical territories and out of separate nations. The new State of the Middle Ages was to be neither a city-State nor an imperial State, but a nation-State. ✓

### THE COUNTRY- OR NATION-STATE

We must guard ourselves against asserting nationality of the peoples of the early Middle Ages. Nations are made by history, and are not merely ethnological entities. The French State was made by the Franks, no doubt, but out of an amalgam of Celts



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and Normans and Visigoths and Germans. The basis of the Spanish State was no doubt Celtic, but it was overlaid by settlements of Visigoths and Berbers and Arabs. England came to the English only in the course of time, and the process was completed only towards the end of the Middle Ages. However that may be, the new State of the Middle Ages was made in a single country and by a single people.

### A NEW SPECIES

A new spirit swept over Europe out of the life of these medium-sized States of the Middle Ages. The several peoples whose very names would have disappeared if Rome had continued her dominion longer began to raise their heads and affirm their individuality. Each of them began to contribute its quota to the treasury of civilization and culture. European civilization was advanced by the competition and rivalry of a number of small States. European culture was enriched by the rise and development of several languages and literatures. Chaucer and Dante, and Shakespeare and Cervantes were because the nation-States of the Middle Ages had been. Without any loss of European unity, which was the great achievement of the Roman Empire, the separate individuality of peoples was saved and preserved.

### MEDIAEVAL ORGANIZATION

The Middle Ages witnessed a great step forward in the art of political organization. The problem of combining a large State with sound political organization was also solved. Although the city-State had gone, its contribution to political integration was a permanent acquisition for the State. Apart from the cities that remained and were centres of political life, especially in Italy, the organization of the city was applied to the larger area called the country. The State idea, as Gierke<sup>1</sup> puts it, appeared in the form of a *Landespersönlichkeit* built out of land and people. The elements of the personality of the city

<sup>1</sup> Gierke, *Das Deutsche Genossenschaftsrecht*, Vol. II, Sect. 33.

unity and commonalty, were applied to the country. The country, says Gierke,<sup>1</sup> was constituted as a corporate society, with the external aspect of international separateness and with the internal aspect of the sovereignty of a fully endowed State. As in cities, so in the country, the corporate organization of society led to a number of improvements—the separation of public from private land, the creation of purely public offices, the super-imposition of special central courts over local and popular ones, the constitution of a government exercising jurisdiction over individual rights, the establishment of a national treasury, a national army, a national law, and a national administration. The ideas and institutions of unity and commonalty and personality of the city thus overflowed into and took possession of the country. They operated over whole lands and peoples. The country was endowed with a personality. What the Greeks had done for the city the Middle Ages did for the country.

IV 3

#### GROUP-LIFE, THE CHARACTERISTIC OF THE MEDIAEVAL STATE

Again the grouped-life of the ancient city-State, of its demes and phratries and gentes, spread into the life of the country. Moreover, the society of the country was organized in local, not social or industrial, groups as in the city. Groups were no doubt the unit of organization of the mediaeval State. It was made up not of individuals but of various groups, ranks and classes, guilds and corporations. The mediaeval State was a *ständische landestaat* organized with representative assemblies and a central government, and it was made up, as Gierke<sup>1</sup> puts it, of *Landesgemeinde* and *Landesobrigkeit*.

#### THE GOVERNMENT OF THE MEDIAEVAL STATE

Not only social groups, but administrative organization went to the making of the mediaeval State. The hereditary monarchy and nobility of the Middle Ages not only represented the undying unity of the State, but were, as Gierke says, unlike

<sup>1</sup> Op. cit.



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the rulers of antiquity, rulers, by their own right, of their territory. They formed, in the language of Gierke, one invisible person that was the subject of governmental rights and duties. Rulership and magistracy were given a right to a life of their own, and were not merely an instrument of government made to order and subject to periodical dissipation as it was in the democratic and elective systems of Greece and Rome. It was this self-standing government of a hereditary monarchy and nobility that kept together the large country state of the Middle Ages with its groups and classes and corporations.

### PROGRESS MARKED BY THE MEDIAEVAL STATE

The mediaeval State thus, through social groups and enlarged political institutions, was an improvement upon the city-State of antiquity. It marked a distinct step forward in the history of the State. The group-State or *Ständestaat* of the Middle Ages spread the idea of the State over large areas of territory. The State idea of the Middle Ages was also morally superior to that of antiquity, as it represented "a morally freer personality with a morally restricted will, a will that was under law, not above it."<sup>1</sup> The mediaeval State marked therefore progress, not only in space, but in form.

In other ways and to a further extent did the State receive a more complete organization in the Middle Ages. Feudalism, with its hierarchical chain of authorities and loyalties, bound and held the large country-State together. Representative institutions introduced the common people to the business of government. Self-government and decentralization distributed interest and share in government evenly through the several parts of the State. Government was not concentrated in the centre as in the Roman Empire and in the States outside the Greek world. Political life played round about the circumference. Corporations gave great scope for the social activity of the people of the Middle Ages. The State of the Middle Ages was broad-based, if not on the peoples' will, at any rate on the

<sup>1</sup> Gierke, *Das Genossenschaftsrecht*, Vol. II, Sect. 33.

life and activity of the people. The sap of life rose from the ground, from the peoples, and it quickened the growth of the State. The State, by having life distributed evenly over all its parts, became lasting and durable. In spite of the coming of religious dissensions brought about by the Reformation, in spite of international rivalry and cupidity brought about by the theories of the Renaissance, in spite of the vast expansion inaugurated by the maritime discoveries of the fifteenth and sixteenth centuries, in spite of aberrations and abuses of government, in spite of revolutions and disasters, the State as it was formed in the Middle Ages has endured.

#### THE MODERN PERIOD

The State has in the modern period developed in size and form beyond mediaeval standards. The mediaeval State, in spite of the progress it had achieved, had, says Gierke, suffered from one weakness. Its basis was double—local and social groups on the one side and an overseeing government on the other. Although there was contact between the two, there was not complete unity. The government of the mediaeval State was not supreme. The Church, the nobility, cities, corporations ✓ detracted from its absolute sovereignty. If, as Gierke remarks, the two elements of the mediaeval State, the groups and the government, had been imbued with the sense of unity and commonalty, the State might have developed along the mediaeval line of freedom and morality. It was because these fell away from the true spirit of commonalty and were spoilt by class and corporate egoism and by the spirit of privilege that the future development of the State was left to the spirit of centralization.

#### THE CENTRALIZED STATE

The ply taken by the State after the Middle Ages was due to the victory of the government of the centralizing State over the groups and corporations of the Middle Ages. It was thus that the modern *obrigkeitliche Staat*, as Gierke calls it, came into exist-

ence. In this State governments counted for everything, and were the leaders of the State and the only instruments of progress, and the old classes and groups were driven from partnership in the work of the State. The personality of the State was absorbed in the personality of the ruler. The enlightened despots of the eighteenth century in Prussia, France and Russia stood out as the sole representatives of the State. Louis XIV might with truth have said "*l'état c'est moi*." The State came to stand transcendent over the people, above and outside them, its will being brought into no kind of relationship with the will of the people, which in fact did not exist. The people of the State were subjects, not citizens. The State was the creator of political life and the subjects were its creatures. An efficient and numerous bureaucracy was the chief and characteristic instrument of government of the absolutist State.

#### UNITY, NOT COMMONALTY, THE MARK OF THE MODERN STATE

It was the spirit of unity, not that of commonalty, that the modern State borrowed from its mediaeval forbear. The maritime discoveries of the fifteenth and sixteenth centuries had increased the size of the State to imperial dimensions, and the silver mines of Porco and Potosi, of Guanagato and Zacatecas, furnished European monarchs with the sinews of centralized absolutism. The absolutist State of the *ancien régime*, as a result of these discoveries and consequent European colonization, spread its sway over nearly the whole of Europe. Modern industry and invention ensure the existence of the large centralized State. Here and there the ideas of law and morality of the Middle Ages continued to influence the government of the State, as in England and Germany outside Prussia.<sup>1</sup> The absolutist State of the eighteenth century was overcome by a revolution in one continent. And the mediaeval ideas of self-government, decentralization, and of the supremacy of law were won for the world by another revolution in another continent. The ideas and institutions

<sup>1</sup> For an amusing account of such German parliamentary life see the German novel *Jew Süß*, by Feuchtwanger.

of self-government, decentralization, corporate and group life of the Middle Ages, combined with the ideas and institutions of unity and centralization of the *ancien régime* in Europe, have given us the State as it came to be in England and the United States of America, which has set the model for the rest of the world.

#### THE SPREAD OF THE MODERN STATE

The new State, founded on the soundest ideas of the Middle Ages and of the modern era, has been going its tour of the world. The country- and nation-State has gone and made new conquests outside Europe. It has increased and multiplied on the American continent. There it has shown how a very large State could be founded on the basis of popular rule. Democracy and the large State have been reconciled in Federalism. The new State has gone out of Europe and colonized in Africa, Asia and Australasia. It has introduced the idea of the nation-State in these parts of the world.

#### BOTH MEDIAEVAL AND MODERN IDEAS NECESSARY

Its progress over the world has not always been accompanied by beneficence and utility to the peoples to whom it introduced itself. It is trying the experiment of the Roman Empire, but with a difference. It is applying the lesson of decentralization which it had learnt in the Middle Ages, and into which it had been driven by the fate of the Roman Empire, to the government of its colonies and dependencies. It is the mediaeval device of decentralization and self-government that will save the modern imperial state from the fate of its predecessors. It is the mediaeval organization of the State through groups and corporations that will drive the sap of life up and down the modern State. The modern country- and nation-State has not always been wise and beneficent and efficient. But it embodies a principle that will make it last. It stands for the individuality of peoples and the development of that individuality. It stands for a principle that has done great things for the

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civilization and culture and the progress of the world, and is still big with hopes for the future.

### THE SURVEY

In this imperfect and slight survey of the history of the State we have followed it from its humble beginnings in Asia, where the first foundations of State and of government as of religion and civilization and culture were laid. We have seen how in Chaldaea and Egypt and Persia it tried its 'prentice hand at organization and government. We have seen the State in these lands stretching itself, expanding and absorbing with no definite and permanent boundaries of land or race. We have seen its government organized from above—tax-gathering, tribute-receiving, satrapial. Elsewhere its government was constituted as if it were a family in China, as if it were a commercial concern in Phoenicia and Carthage, as if it were a community in Peru. The place of the State was taken by Society in India. These attempts at organization were the first puny and child-like activities of the State.

And then it went to school and into training in the Greek city-State. Trying to build on a small scale, it was more successful. The State in Greek hands became homogeneous, compact, self-governing. Emboldened by its success, the city-State in the hands of Rome tried to embrace a world in its jurisdiction. It broke and gave way to the country-State of the Middle Ages.

The mediaeval State, with its groups and corporations, its decentralization and self-government and rule of law and morality, showed how a large State should be organized if it was to endure. But government played a comparatively small part in the mediaeval State. The strengthening of government as the presiding genius of the State was the work of the absolutist State of the eighteenth century, which made the State centralized and uniform. The marriage of the mediaeval ideas of self-government, group and corporate life with the modern idea of

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centralized government and unity has given us the State which holds the future in its hands.

### MANY STRAINS

Many strains have blended in the making of the modern State—Asiatic, European, mediaeval and modern. The State has been made in the course of history. History has created and fashioned and developed it. With much pain and suffering it was born in the East. It developed and received its form in the West. It has passed through strange vicissitudes. It has assumed all kinds of shapes and frames. Its internal organization has varied from extreme to extreme of form. But through all the changes and chances of its fortune it has upheld itself as the chief instrument raised for the secular progress of man. It has points of contact and similarity with other human institutions and groups. But it is the greatest of them all. As Gierke says, there is nothing similar to it that is above it. It is the highest expression of the social spirit of man. The State is the subject of all history. That one fact is enough to show that of all the creations of man the State is the greatest.

## II

### LAND AND PEOPLE

“To the solid ground  
Of Nature trusts the mind which builds for aye.”  
WORDSWORTH.

#### LAND THE FIRST FACTOR

“In the beginning God created the heaven and the earth,” and then “the Lord God formed man of the dust of the ground.” In the order of creation, according to Genesis, the land comes first and man afterwards. The Hebrew account is supported by the tradition of almost every other people.<sup>1</sup> According to Babylonian legend the first man was fashioned out of a paste made of earth and the blood of God. The ancient Egyptians believed that man was moulded by Khuanan, the father of gods, out of clay on his potter’s wheel. Similarly in Greek legend Prometheus is said to have moulded men out of clay at Panopeus in Phocis. Almost identical accounts are to be traced in the tradition about the origin of mankind preserved in the race-memory of the savages still to be found on the earth. Among the Australian blacks near Melbourne, among the Tahitians, among the Karens of Burma, the Kurumis of the Chittagong hills in Eastern India, the Korkus of the Central Provinces of India, and the Santhalis man was made of earth. Land was the stuff out of which the first man was shaped. And it is the stuff out of which the State is made. Land is the *sine qua non* condition and circumstance of the State. Without it a State cannot be. A people may be ever so organized and disciplined, but if it does not occupy some piece of land permanently, it cannot be said to have formed a State.

#### LAND THE DIFFERENTIA OF THE STATE

There has been no such thing as a sea-State, although there

<sup>1</sup> J. G. Frazer, *Folk-lore in the Old Testament*, Vol. I.



have been hill-States. The sea is a highway and offers no home to man. Even Venice, the queen of the sea, had to plant her feet on the *terra firma* by her lagoons. Pirates like those whom Pompey punished, or the Vitalian order on the Baltic Sea in the Middle Ages, or the filibusters or buccaneers of modern times, although they possessed most of the organization and panoply of government, do not form States. And if pirates like the Barbary Corsairs and the Northmen did found States, it was only after they had pinned themselves to some piece of land. Nomadic peoples like the Tartars and the Bedouins may have all the essential elements of political organization—a recognized head who is the sign and instrument of their unity, coercive authority, an organized army, a hierarchy of government—they may also have popular assemblies, elected executives and social equality and freedom. But till they fix themselves on land they do not begin real political life.

Neither Churches like the Catholic nor religious orders like the Jesuits, although they may have all the other properties of a State—coercive authority, legislative power, universal obedience exercised over its members—can be called States, for their jurisdiction is primarily over peoples, not lands. That is probably why the Papacy, which has always claimed that the Church is a *perfecta societas*, has looked upon the loss of its temporal power in 1870 as a mark of the defective sovereignty of the Pope. The Knights of St. John, however, although a religious Order, founded and ruled the State of Malta upon the land of which they had settled. It is land that fixes and places a people in Statehood. A State is in solution, so to speak, among nomadic peoples. It is in the air. It is land that makes the State stand. It gives it form and shape and existence. It is land that makes the State.

#### LAND NAMES THE STATE

The most common political division of a State is territorial. Only a St. Just could suggest that the political division of a country should be according to population, and that France



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should be divided not into eighty-five departments, but into eighty-five tribes. The importance of land in the making of the State is recognized in ordinary parlance and in political practice, if not so much in political theory. As Frantz<sup>1</sup> points out, it is the land that gives its name to most modern States. The State in England, France, Spain and a score of others, is known by the name of the land which it occupies.

### ECONOMIC IMPORTANCE OF LAND

Land still continues to be, in spite of the enormous development of industrial wealth, the chief source of wealth in most countries. It is the subject of a long chapter in the law of most peoples. It is the storm-centre of modern political controversy. Socialists and Communists on the one side and individualists on the other fight for it as the prize. Communism at least recognizes that land is the most precious possession of a State, and must therefore be owned and used by the State and not by this or that individual. Land is treated differently from other forms of property in most codes of law.

### POLITICAL IMPORTANCE OF LAND

The Middle Ages, when political instincts were sound and led it to arrive at truths which we are now only recovering through our mistakes and reasoning, recognized the importance of land in such expressions as Landrecht, Landgericht, Landsgemeinde, Estates and États, to denote some of the most important institutions of government. Through the institutions of Feudalism it was recognized as the basis of all its social and political life. Land is not only the most important object of internal government, it is the object of the foreign policy of a State. Disputes about land boundaries have been the most frequent cause of war between States. It is hunger for land that drives Europeans to colonize the empty places of the earth and to build their new empires on the ruins of those they have destroyed. It is the desire to possess land that creates

<sup>1</sup> Frantz, *Die Naturlehre des Staats*, Bk. II.

difficulties that seem to be insuperable between European and Asiatic colonists in the British Empire. It is land that has lured the Russian moujik to fertilize with the sweat of his brow the dry places of Siberia and of the steppes of Central Asia. The legendary founders of States—Cyclops, Manu, Hoang-ti—were also the mythical teachers of agriculture to their peoples.

#### LAND MAKES THE STATE

Every State recognizes that land is its most valuable possession, and swords fly from their scabbards as soon as a State is threatened with the loss of an inch of its land. Fatherland or mother country, and not reasons of State, are the flags round which people are most ready to fight and die. The English State is an abstract notion compared to "this blessed spot, this earth, this realm, this England."

#### DANGER OF DEPRECIATING LAND

All this enthusiasm and love and jealousy with which the land of a State is regarded testify to the high place that land occupied in the making of the State. This unique position of land recognized by the law and policy of every State, by popular language and international custom, as well as in song and history, would have been taken as a matter of course in other times than ours when abstract reasoning and temporary circumstances are killing one healthy political instinct after another. Land is not the only source nor the most profitable source of wealth in modern times. Modern law, therefore, tries to reduce it to the position of other forms of property. Land, modern economists say, should be dealt with as if it were as marketable a product as cotton cloth or steel beams. Rent for land is exactly like interest on capital. Agriculture came to be depreciated in England in the later nineteenth century, as the value set upon Industry went up. Money and labour are the chief instruments of industrial wealth, and the plutocrat and the proletariat fill the stage of modern public life, while the land-owning aristo-

crat is receding into the background. The mass-production of modern times requires only the labouring masses. They are supposed to make the State, according to Marx in theory and Lenin in practice. In the definition of the State of even such a well-grounded writer as Mohl,<sup>1</sup> the people form the organism of the State, and the land is just the stage on which they act their part.

This depreciation of land and undue appreciation of the people as vital elements in the making of a State are not matters of indifference and of speculative interest, but are a fundamental transvaluation of values. If the people form the most important element in the organism of the State, and its land is only a matter of secondary consideration, then the interests of the people must override even the historical rights of land. If a rising and expanding people find that their land is not enough for them, and they have the requisite power, well then, the integrity of other people's lands must yield to their need. Although treaties and international pacts aim at keeping the land frontiers of States inviolable, they must be torn and thrown to the winds so that a powerful people may find more room for itself. If only people make the State and land exists for them, "spheres of influence" must be carved out and dominion established by superior peoples out of the lands of peoples who cannot guard them against appropriation or conquest. Most of the chauvinistic and imperialistic policy of the nineteenth and twentieth centuries may be traced to the door of this popular forgetfulness of the uniqueness and pre-eminence of land as an element in the making of the State. The Great War was brought about by statesmen who believed that one land was as good as another, that Germany meant the land occupied by the German people wherever they may be, and that people could be moved about from place to place as the Jews were moved from Palestine to Babylon and Egypt at the fiat of a despot. But the Great War showed that land was, after all, the only sure source of wealth, when England, with all its

<sup>1</sup> Mohl, *Encyclopaedie des Staats-wissenschaften*, I.

wealth in cloth and iron and steel, could not produce the food its people wanted.

The vast importance of land in the making of the State has to be insisted on and remembered. Not that we should hold the people as of less worth or value. It is the lasting glory of the modern era that its leaders and makers fought for and won the recognition of the people, especially of the so-called masses, as the be-all and end-all of the State. They have been recognized to be not only the makers but the beneficiaries of the State. But it cannot be denied that their importance has been exaggerated at the expense of the consideration due to that other factor in the making of the State. The idea has been popular that land exists for the sake of a people, that it can be extended and reduced to suit the whims and caprices of peoples, that it is a secondary consideration to be treated of no account when pitted against the needs and ambitions of peoples. Because land has been occupied and exploited in the interests of a few, and there have been drones of landlords, landowning is considered to be a crime. The land is punished for the sins of landowners. As if systems of land tenure cannot be improved and land be better and more evenly distributed, as J. S. Mill suggested when he advised the expropriation of the present landlords in England and the more even distribution of land. It is only at the peril of endangering national prosperity and international peace that one may depreciate land as a factor in the making of the State.

#### PHYSICAL FEATURES MAKE THE STATE

Land is not merely a necessary element in the making of the State. It determines the whole structure, character and nature of the State. Whether a State shall be small or large, a city-State or a country-State, a federation or an empire, is largely determined by the circumstances of the land it occupies. Its physical features, in which its climate is included, influence its size and shape. They even decide whether a State shall or shall not be. The Eskimos, the Lapps, the Greenlanders can

never make a State, for all their time and energy have to be given to the business of finding their precarious food and protecting themselves against the extreme cold. Tropical lands like Tahiti and the oceanic isles, where life is easy and food is ready-made, breed unpolitical peoples. The steppes of Central Asia are the home of the nomad. The prairies of the Savannahs, the Mississippi valley-land and the Rocky Mountains are the happy hunting-ground of the Indian tribes. The shifting sands of the desert are too slippery for the founding of States. What has been called the "creeping desiccation" of Rajputana accounts at once for the origin and the history of Rajput States.

## EXAMPLES

It is, says Reclus, the fortunate condition of the soil, the climate, the form and situation of the continent of Europe, that have enabled Europeans to become the leaders of the world. This superiority cannot be attributed solely to racial genius, for the kinsmen of the Europeans, the Persians and the Asiatic Aryans, have not been able to form as enduring States. The most ancient States known to history have been made by rivers. Egypt was, as Herodotus<sup>1</sup> said long ago, a gift of the Nile. The Euphrates and the Tigris made the mesopotamic States of Sumer and Akkad, Assyria and Babylonia. The mighty rivers of South America, the Amazon, the Orinoco, and their numerous lesser companions, obstructed by their falls and rapids, have broken the native populations of that subcontinent into a multitude of small tribes isolated one from the other. States were never formed there till European conquerors and colonists came on the scene.

The five rivers of the Punjab and the Ganges and the Jumna gave birth to the States of the Sapta Sindu, the Panchanad, and of Madhyadesa in India. The size, the shape, the lines of expansion of these ancient States of India were determined by the course of these rivers and their tributaries. The political development of ancient India took place along the rivers

<sup>1</sup> Bk. II, ch. 5 (Rawlinson's trans.).

Ganges and Indus, chief of all, and the seacoasts of India. The backwardness of the forest tribes of Central India and Gondwana, the Bhils, the Khands, the Santhals is thus accounted for. The geographical multifariousness of India, as Lassen<sup>1</sup> calls it, with its division into highlands and plains, and into seacoast and inland, with its extremes of climate and variety of flora and fauna, are an excuse for the political multifariousness of India.

The vast State of China is made by the basin of three great rivers, which run across China west to east in parallel courses. These river-States of Egypt, Mesopotamia, India and China have, on account of the nature of their makers, been isolated self-centred States. Hill-made States like Phoenicia, the Greek and the Roman States, on the other hand, have linked the different people of the world together. The vast tableland of Mexico made the empire of Mexico. The Incas rode to power on the saddle of the Rocky Mountains. The vast plains of Russia have created in Europe a State as large as China in the East. The city-States of Greece were not inevitable, but their formation was encouraged by the numerous small mountains and rivers and the indented seacoast of Greece.

#### THE COUNTRY-STATE

The nation or country-States of Europe, France, Spain, Portugal, Norway and Sweden, Switzerland, Hungary, England, were made in the Middle Ages by their definite sea and land boundaries. Italy and Germany were the exceptions to this rule, the former prevented from achieving national statehood by city-State traditions and the presence of the Papacy, the latter by the attraction and burden of empire. Poland and Prussia were the States that were determined to attain statehood against fearful odds of physical features. The former was made along a river by a nobility, the latter along the flat levels of Northern Germany by its army. England and the Phoenician States of Carthage, Tyre and Sidon had to be maritime and commercial States.

<sup>1</sup> Lassen, *Indische Alterthumskunde*, Vol. I.



## THE MAKING OF THE STATE

### PHYSICAL FEATURES AND GOVERNMENT

Not merely the size and shape, but the internal constitution and structure of States is often and largely determined by their physical features. The inundations of the Nile, if they are to fertilize Egypt, have to be so closely watched and so carefully regulated that nothing less than the despotism of the Pharaohs could have done it.<sup>1</sup> More than the need for despotism, says Metchnikoff,<sup>2</sup> the *milieu* of the Nile taught the Egyptians that splendid solidarity which was the chief cause of the greatness of ancient Egypt. The canals of irrigation, says Reclus, indispensable for the cultivation of those parts of Egypt that are outside the area of the inundations, cannot be built or maintained except by the united labour of a multitude of people. Only two alternatives are open to the Egyptian, either association of all in a democratic equality of rights or submission of all to a common despot, native or foreign. Who can deny that the monotony of ancient Egyptian life and the standstill of Egypt as a State were due "to a clocklike regularity of the rise and inundation of the Nile in a land, all of one kind and quality, where no changes of weather are feared and no anxious looks are turned towards the sky?"<sup>3</sup> The clear skies of lower Mesopotamia invited the rulers of Chaldaea to be watchers of the skies and priests as well as kings—crowned astronomers and astrologers in fact. The basin of the Euphrates and the Tigris lent itself to the founding of large States imperial in size if not in organization, as was proved by the success of the Medes and the Persians and Alexander and the Seleucids.

The configuration of the land in China with its frequent valleys and ravines and depressions and holes suggests the parcelling of the soil in circumscribed portions called *tian*. The cultivation of each of these bits of land required only a small group of cultivators and favoured the development of that

<sup>1</sup> Lenormant, quoted in Metchnikoff, *La civilisation et les grandes fleuves historiques*.

<sup>2</sup> Ibid.

<sup>3</sup> For the influence of the Nile on the social life of Egypt see March Phillips, *Works of Man*.

autonomy of the family which is the characteristic feature of Chinese social organization.<sup>1</sup> The Chinese State was a collection of families ruled on the patriarchal model, which was enough for each family. The three parts of Peru—the coast, the plains and the dominating ridge of the Rockies in between—suggested the patriarchal despotism of the Incas. The steppes of Central Asia and Africa determine the characteristic features of nomadic government—the semi-independence of the confederated group, the election of the chief, the lightness and simplicity of the rule, the mobile life, the tribal divisions, the loyalty to person rather than to institutions, and the large place filled by the horse in public and private life.<sup>2</sup> The intense political life and development of the great city-State was due as much to its size as to the genius of the people.

#### LAND AND CONSTITUTIONS

The stability of the large country or nation-State of the Middle Ages could have been ensured only on the basis of a social system like Feudalism, which articulated the various parts of the large State together on the bony frame of the land. Representative government had to be invented if the principle of popular rule was to be introduced into the government of the large country State. Constitutional and parliamentary government could have a freer and longer course in an island like England than in a country like France, with its not insuperable land frontiers, or Spain, eager to keep out the invaders who had come so easily from across the straits and who had been expelled only after centuries of incessant struggle. The vast dominion of the Russians could be kept together by the despotism of the Tsars or of the Soviet. The army, which was the one sure defence of a frontierless Prussia surrounded by powerful enemies, has always filled a large place in the hearts and in the government of the people of Prussia. It was not only the

<sup>1</sup> Metchnikoff, *op. cit.*

<sup>2</sup> For a literary account of the nomad in history see Newman's *Lectures on the Turks*.



inter-mixture of Germans and Slavs, but the hills, the rivers, and the deep valleys that divided up Germany into small countries and gave it the name of the Germanies in the Middle Ages, that kept it severed till unity was imposed on it from above and outside by the iron hand of Prussia. The natural seclusion of Switzerland has favoured the establishment of a free and popular federal republic. The uninhabited reserves of land in the United States of America, Frantz<sup>1</sup> points out, allowed the excessive individualism, ensured the democratic equality among a growing and various population, and held the delicate mechanism of a federal State spread over a vast extent of territory together.

#### LAND TENURES AND CONSTITUTIONS

Systems of landholding have influenced the constitutions of States. If land is the stuff out of which the State is made, how that land is held and distributed must affect the public life and law of the State. Land laws really form part of the constitutional law of a State. This truth received more general recognition in ancient than in modern times. In the laws of Moses and Manu precepts about the holding and division of land and tithes fill important chapters. Solon began the series of constitutional reforms in Greece with land legislation and graded the devolution of political power according to the wealth derived by the different classes from land. The *latifundia* of Italy were the economic expression of the rule of a selfish oligarchy and the cause of that Gracchan agitation which was the beginning of the end of the Roman Republic. Feudalism, which gave a constitution and government to European society for a thousand years, was reared on land. Under Feudalism landowners only possessed political power and to the extent of their possession and control of land. And the governments of European States have always been influenced by the landed aristocracy till revolution came to make a clean sweep of them all.

<sup>1</sup> Frantz, *Die Naturlehre des Staats*, Bk. II, Sect. 4.

England is still ruled by a landed aristocracy in spite of universal suffrage and the rise of a plutocracy. The laws of succession to property in land affect the structure of society and government. The law of primogeniture, whose great advantage, as Maine put it, was that it saw that there was only one fool in a family, not only strengthened the foundations of aristocratic government in England, but sent the younger sons into politics, industry and the professions, and furnished the country with its leaders and explorers and pioneers. The federalism of the German Reich was weakened by the feudalism of the confederate States. Not until Napoleon decreed the equal division of landed property among the children of landowners was the equality incorporated in French revolutionary constitutions safe. And every subsequent attempt to revive the monarchy and aristocratic government has been accompanied by an attempt to introduce the system of *majorats* into French succession law. The domination of Caste in India exercised by a landless aristocracy required, like the despotism of Napoleon, a compulsory and equal division of landed property, and it is not fanciful to suggest that much of the unrest and instability of modern India is due to the proletarianization of land caused by the excessive and unlimited subdivision of holdings.

#### LAND THE SUBSTANCE OF THE STATE

The importance of land is fairly well recognized in economic thought, though Adam Smith and his school have pushed it into the background and have given more prominence to trade, commerce and industry as sources of national wealth. But in politics the importance of land cannot be exaggerated, for it is the substance of the State. It cannot be a matter of indifference to a State how that land on which it is built is held and handled. The form and stability of a State, and not merely its prosperity, are affected by systems of land tenure. Agriculture is the mother of civilization. It is indispensable.

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It is a necessity, while compared to it industry is a luxury. As the husbandman in the old English folk song<sup>1</sup> says,

"There is neither king nor lord nor squire,  
Nor member of the shire,  
Can do without the husbandman."

According to legend the first teachers of agriculture were also the makers of the State. As Frantz reminds us, the boundaries of ancient States used to be drawn by bullock-driven ploughs, as in the case of Rome by Romulus. And in imperial China one of the most impressive of national ceremonies was the annual and solemn driving of a plough by the Emperor of China. The Achilles heel of the colossal State of Russia was its servile land tenure, and the stability of the Soviet State is secured by the individual proprietorship of the Russian moujik.

## FORESTS AND THE STATE

The nature of the composition of the land of a State influences largely the making of the State. Riehl,<sup>2</sup> the great German writer on social politics, has built a whole theory of political evolution on the relations between forest and cultivated land. Every revolution, he says, does hurt to the forest and adduces instances of Napoleonic statesmanship buying cheap popularity at the expense of the forest. No State can be a State, according to Riehl, that is not endowed with forests which are a reserve, not only of wood, but of national energy and vitality. A people renews its strength in these the primeval haunts of man. The preservation and increase of forest land is not only a maxim of economic policy, but a principle of political statesmanship. The climate, the nervous energy, the power of recovery of a people are fostered by the presence of forests. Italy has suffered politically as well as economically from the denudation of its forests. The rights of the forest are as sacred to the statesman as those of cultivated land.

<sup>1</sup> Quoted in Trevelyan's *History of England*.

<sup>2</sup> Riehl, *Land und Leute*, ch. I.

FORESTS AND THE STATE IN INDIA

Forests have given rise to a whole philosophy of life. The philosophy of India is largely a forest philosophy.<sup>1</sup> As one wanders in an Indian forest, one cannot help connecting the confusion of cause with effect, of origin with end, of God in all and of all in God, which occurs in Hindu pantheism, with the confusion of tree with creeper, of root with branch, of trunk with undergrowth, which is the bewildering characteristic of Indian forest scenery. One cannot see the wood for the trees in Indian philosophy as in an Indian forest. Bamboo scraping pine, creeper entwining tree-trunk, undergrowth smothering roots, trees locked in each other, branches of one tree entwined with the branches of another seem to be murmuring to each other *Tat tvam asi*. The domination of the forest over the private and public life of India has lasted throughout the ages. The protection of the Rishis of the forest was one of the duties imposed upon Rama, the pattern of Hindu kings. And one of the maxims of the Ramayana lays it down that "those who die in the forest attain eternal regions." And in history the forests of India called for those huge elephant corps which had their uses in wars between Indian States but were disastrous against the light infantry of the Greeks or the mobile cavalry of the Turkish invaders of India. The first decisive victory of Muhamad of Ghazni over the Hindus was caused by the elephant of the leader of the Hindu hosts turning on them and throwing them into disorder.

The domination of nature in ancient India, as witnessed to by some of the most powerful and memorable passages in the epics and the dramas, must go a long way to explain the political helplessness and failure of Hindu India. Victor de Laprade, the historian of the influence of Nature on Art and Literature, speaks of ancient Indian society developing like a tree which is not able to detach itself from its soil and has not the power to extend itself beyond itself. How many of the

<sup>1</sup> See Rabindranath Tagore's essay on "The Religion of the Forest" in his *Creative Unity*.

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States of ancient India could be compared to such self-dependent and isolated trees! As the same critic has noted, while in the epics of the Greeks the doings of man are celebrated, in the *Ramayana* and *Mahabharata* it is passive meditation, or the still painting of ascetic life, or the fancies of imagination and mysticism, subtle philosophic dissertations, profound monologues and splendid descriptions of nature that hold the field.<sup>1</sup> Nature is spiritualized in Indian literature to an extent not comprehensible to the Greek and not apparent again till the time of Lamartine and Victor Hugo and Wordsworth in the nineteenth century.

### CROPS AND THE STATE

Nor is it a matter of political difference what is grown on land. The rice-growing peoples have played a secondary part as compared with the wheat-growing nations. It was Montesquieu's<sup>2</sup> opinion that rice-growing countries like China are frequently subject to famines. The unmeasured cultivation of the potato, according to Riehl, has not a little to do with the proletarianization of modern peoples.

### THE POLITICS OF LAND

Land is not a mere factor in the production of wealth as mere economists tend to treat it. It is that and very much more. Ancient peoples felt this instinctively. The Egyptians saw in agriculture the manifestation of divine life and their religion sanctified it. The protection of agriculture is one of the chief duties of the king in India, according to Kautilya.<sup>3</sup> It is the height of impolicy for politicians to treat land as if it were a mere commodity like furniture or clothes. It must be treated as the unique thing that it is. The simple fact that it is fixed and immovable ought to show people that it cannot be knocked about and lightly handled. The theory of a Duke of Newcastle that he could do what he liked with his own is certainly not

<sup>1</sup> Laprade, *Le Sentiment de la Nature avant le Christianisme*.

<sup>2</sup> *L'Esprit des lois*, Liv. VIII, ch. 21.

<sup>3</sup> *Arthasastra*, Bk. II, ch. 2 (Shamasastri's trans.).

applicable to land. No State can allow absolute property, the *jus utendi et abutendi*, in land. The equality of treatment given to land and immovable property in Roman Law from very early time accounts at once for the progress and the dissolution of the Roman republic. For the equality of land to other forms of property led, when population began to press on the soil, to the decay of agriculture, the rise of Money as a political influence, of a plutocracy facing a proletariat and the end of the republic in Caesarism.

Land must be treated with honour and sympathy as the foundation of a State. Law must uphold its uniqueness, its dignity, and its owners and cultivators must be guaranteed peculiar position and powers in the State. Landowners, be they large or small—and the more evenly distributed land is, the sounder a State will be—must be endowed with special privileges. They cannot be treated on the same footing as those nomads of modern civilization, the capitalists, the money-lenders, the factory workers. Statesmen may tamper or tinker with land only at the peril of their States. For land is not a mere decoration of the building, a thread on which the theme of the State is strung. It is the very rock out of which the State is carved. It is not the mere frame or skeleton of the State. It is its very flesh, blood and bone.

#### PEOPLE, THE SECOND FACTOR

The other concomitant factor in the making of the State is People. We say advisedly people, and not man or men. For neither individual man nor men as individuals ever made a State, or even existed, for that matter, in the beginning of history. Everywhere in the early dawn of political life we see men living in groups or communities, as a people. Whether among the primitive peoples of antiquity or among the savages of contemporary times, we see men gathered together in groups. The family is generally the most elementary group. And then in sibs or clans and tribes and confederations of tribes, man mounts the political scale. Man *qua* man, as the individual,

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we never find in existence except in the atomic societies of to-day or in the theories of individualist philosophers.

### PEOPLE ONLY IN GROUPS

Whether among Australian aborigines, or African negroes, or Central Asiatic hordes, or American tribes, or among the first Egyptians, Mesopotamians, Aryans or Mongols, we find men living the social life only in groups or communities. "Groups with a common name, the tradition of kinship or descent from a common ancestor, human demi-god or wild animal,"<sup>1</sup> make the composition of the historical and contemporary tribes to be found in India, like the Dravidians of the Central Belt or the Mongoloid tribes of Assam, or the Vedic tribes which consisted of subordinate clans, which in their turn were comprised of "groups of related families." The Indian village community itself, which was the foundation of the political structure of India in history, was a group of this kind "established upon a clan or even a family basis, cemented by the possession of a definite tract of pasture or arable land." It is not only that every one of these peoples presents itself as a community bound into one by ties of kindred and natural relationship; but each one of them is composed of smaller groups till the last unit is reached in the family. It is only as a member of a clan, or a tribe, or a totem group, or a family, that man is known in primitive society. Man as man, as an individual, would be a *monstrum horrendum* inconceivable to primitive folk. Group life is the only kind of life known and possible to them.

### KINDS OF GROUPS

And not one single principle divides them into their numerous groups. "Primitive tribes," says Lowie,<sup>2</sup> "are stratified by age distinctions, by differences of sex, and of matrimonial status, beside the distribution of family, clan or tribe. Not merely kinship, but industrial occupations, material utility, social needs

<sup>1</sup> Baines, *Ethnography of Castes and Tribes of India*.

<sup>2</sup> Lowie, *Primitive Society*, ch. x.



cause the formation of these groups." Recent research summarized in Lowie's *Primitive Society* shows that beside the family, the clan, or sib, there were numerous kinds of associations thrown up by the gregarious instincts of ancient man. In the Andaman Islands<sup>1</sup> in every encampment "there is the triple arrangement of huts for bachelors, spinsters and married couples," the relations between these three groups being regulated by taboos. Among the Australian Aborigines the clan or sib organization is cross-divided by association based on sex, age or occupation. "Thus a Warranunga man may belong to the Wild-cat sib, and he is free to eat emu flesh so far as any sib regulation goes; he must, nevertheless, abstain from emu food till he is at least a middle-aged man; he may be of either moiety and of any sib or family whatever, but if he is an initiated bachelor he will live divorced from his family, sib, and moiety in the company of the other bachelors of the encampment." Again, over a large section of the island there holds sway the class system, which appears in a four-class and an eight-class variety. Masai society escapes an aspect of bald monotony by its bachelor kraals, its initiatory sub-grades and the age classes. The village clubhouse in the Banks Islands is a man's club, sacred to masculine exclusiveness, membership of which is the mark of tribal manhood. Secret organizations called "Ghost Societies," of which the small island of Noto boasts not less than seventy-seven, are another expression of the group instincts among the savages of these islands.<sup>2</sup> Among the Pueblo and Crow Indians there is a bewildering variety of communal organization, masked by such designations as Big Earholes, Last Hot Dancers, Sioux Dancers, Dance Societies, Night Hot Dancers, and so forth. The Santhalis of India have kept up to this day<sup>3</sup> an elaborate tribal organization with a most intricate subdivision of clans and with mystic passwords current among them.

The same social instincts drove the ancestors of the

<sup>1</sup> Lowie, *Primitive Society*, ch. xi.

<sup>2</sup> Ibid.

<sup>3</sup> Baines, *Ethnography of Castes and Tribes of India*.

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civilized peoples of history into the formation of similar groups. Caste among the ancient Hindus and Egyptians, the military orders of the Princes, the Eagles and the Tigers among the Mexicans, the Incas and Curacas among the Peruvians, the Demes and Phratries and Phylae of Athens, the gentes and tribes of Rome, the classes of mediaeval society in Europe, are a few among the endless variety of groups which have found expression for the social life of man in history.

### NATURALNESS OF GROUPS

This phenomenon of the group-life of man is not a matter for wonder. As soon as man began life on earth he found himself a member of a group called the family. "*Prima Societas*," says Cicero, "*in ipso conjugio, est proxima in liberis, deinde una domus.*" When he emerged from the family, the life of some larger group, the kindred, the sib or clan, or tribe, covered him with its mantle. And it was only as a member of a group that primitive man could thrive. The self-centred, self-reliant individual would have gone to the wall in primitive society. The individualistic theory which reduces society to a collection of atomistic individuals was born and flourished in an age and country which saw security of life and property and individual liberty well established beyond cavil or threat. It could not have been thought of at a time when peace and security were still in the making.

### THE GROUP NECESSARY

In primitive times, the individual's life, property and liberty were safe, or at least could be vindicated, only so far as he was a member of a group, large or small as it may be. He could sow and reap, hunt and graze, fight and conquer only as a member of a family, clan or tribe. He could marry only members of a certain group, because they were members of that group. He could eat only with members of one group and could not eat with members of another group. Taboos and totems divided his group from the groups of other men. He governed

and organized himself for all social purposes only in and through groups. To other men, to other groups, to the authority that governed him he presented himself as a member of a group. This group-life was not only natural, it was necessary. It was this group-life that strengthened and consolidated primitive society and the ancient State. Group-life made a man of primitive man. As Homer says,

“Life or virtue comes through fellowship even of bad men.”

#### HOW GROUPS MADE PRIMITIVE SOCIETY

If ancient society had been a collection or heap of individuals it would have been as listless and barren as the sands on the seashore. Primitive society became a living organism through the life of these smaller groups. As the body of man lives on account of the life of the smaller organs and still smaller cells that compose it, so society derived its life from the life of smaller social groups. Living organisms are made up of other smaller living organisms. It is only lifeless heaps of sand or stones that are made up of individual bits of stone and sand. The life of society depends on the life of minor groups composing it. It was they that on a small scale taught primitive man the worth and utility of social solidarity, the value of obedience, the uses of loyalty. Although man is naturally sociable, yet his social instincts are easily overcome by the original sin of egoism exhibited in the individual's lust, or avarice, or jealousy, as is proved by the records of crime. Man has therefore to be strengthened in his social instincts and trained in the social virtues if society is to hold. And this social training was given to primitive man in the family, the village club, the religious fraternity, the sib or clan or tribe. These smaller groups gave strength and consistency to ancient society. They were like the knots that give strength and resistance to timber. They did not detract from the life and strength of the larger whole. Their life in fact was the cause and condition of the life of the higher kind. Thanks to the persistence and continuance of group-life, man's egoistic

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tendencies yielded to his social instincts, and the foundations of the State were securely laid.

### HOW GROUPS MADE THE STATE

Man's success in forming large States in the course of history was due to the long periods of training he underwent in the social life of small communities. The large State of modern times which began to be formed in the Middle Ages was formed by means of and through a number of groups. The estates and baronies of feudal society, the guilds and corporations of the town, the Church and the religious orders organized the social life of mediaeval Europe. Thanks to the training and experience in the States outside the Greek world, in the Greek and Roman city-State and the States of the Middle Ages of Europe, he has been able to form large groups beside the State, like the nation and the Church. His very success in forming these large groups has made him forget his origin, and to dare to say that he can afford to live the larger life of the State and the nation without living the smaller life of the group.

### THE NATION AND RACE

Before we speak of the large and dominating group of modern times, the nation, it may be necessary to say a word in regard to a similar grouping of man which has filled some place in modern political discussion. But it will not be a long word. For race is not the product of historical events, but of the imagination of certain historians. There has never been a Teutonic race, for instance, except in the imagination of certain Teutonic historians, nor an Aryan race, nor a Semitic race, nor a Mongolian race, nor even a Nordic race. There have been Teutonic tribes, Aryan tribes, Semitic tribes and Mongolian tribes. Race is a logical title invented by historians and ethnologists to denote certain sections of mankind that are supposed to have come from a common home and possess certain common characteristics of language, customs and traditions. Race

is a logical concept, not a historical fact. But, on the other hand, nations are the results of historical events. They are made by history. Community of descent, community of language, community of custom and of traditions of life are the necessary elements. But these do not by themselves make a nation. It is not every people that has had these things that has become a nation. One need only think of those peoples that have gone down in the world, the Huns, the Goths, the Vandals, the peoples called comprehensively the Dasyus by the conquering Aryans in India—and others whom history did not make, but let slip through its hands—and one would realize that mere community of blood, language and life do not constitute nations.

#### NATIONS ARE MADE, NOT BORN

These things must be there, but they may either be given by Nature or artificially forced. And generally these attributes of nationhood have been acquired by force or artifice. Legend lets us into the secret of how ancient nations were made. Theseus gathered the people of twelve hamlets and made of them the Athenians ; Romulus made the Romans out of the Ramnes and the Tities and the Luceres. Most of the nations of history have been forged in the smithy of historical events. They have been made with the hammer and tongs of historical facts. Conquest generally has made them. The diverse elements of the English people, the Britons, the Celts, the Danes, the Angles, the Saxons, were hammered into one, as Kipling puts it, by the Norman Conquest and Norman law and administration that came after it. The Franks made France by conquering Austrasians, Neustrians, the Visigoths, and imposing the French language to the detriment of Provençal and Breton dialects. In the process of a life-and-death struggle with the Moors (A.D. 750–1492), the Spanish people reached national unity, in spite of the persistence of Basque and Catalanian. Great Russia and Little Russia, Kiev and Novgorod were brought together by the foreign conquest of the Varangians, and not

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till after the Tartar domination did Russia become conscious of itself. The Poles, the Czechs and a number of small Slav tribes were forced, between the thirteenth and fifteenth centuries, by war and the imminent fear of Germany, into Polish and Bohemian nationality. The Magyars established (A.D. 1000-1301), under the Arpads, an Eastern enclave in the heart of Europe and preserved it only at the point of the sword. The Serbs and the Bulgars, under their heroic leader, Stephen Douchan (1331-1351), realized a national existence even in the Middle Ages.

The republics of the United States of America and of Spanish America in modern times seceded from a larger State into separate nationhood. The two peoples of Europe, the Germans and the Italians, that did not succeed in realizing this national unity until the year 1870, were themselves gathered into one by conquest. They were nations in solution till force crystallized them. In fact, there is not a single instance in history of a nation coming to life through spontaneous generation.

### NATIONS MADE BY HISTORY

Hard things of history, like war or conquest or a grinding government, have made the nations. Force has welded peoples into nations. It is true this force has been more or less cheerfully acquiesced in by the peoples subjected to them. But force it was all the same. Nor could it be otherwise. Voluntary union is all very well for small groups like the family, or a club or a clan. But when people determined for their own reasons to form large social and political unions, they had to make use of the cement of force. Although no social union, large or small, can be held together by mere force, it, however, is necessary to bring and fasten together different pieces of a people.

### THE NATION-STATE

However it was, large groups of peoples called nations came into existence in the course of European history. They were

not so large as the collections of peoples that formed the ancient States of Assyria or Persia, or Peru or Mexico. But these latter were not groups in the real sense of the term, having language, law and life in common. But the nation was an attempt at projecting the attributes of the group—community of language, customs, and manners of life—on a larger map. The nation has realized group life on a very large scale. It was a large scale manifestation of the group instinct in man. The national bond was necessary to hold the large modern State together. In spite of the modern exaggeration of the principle of national unity which may be summed up in the phrase *one nation, one State*, and a strict application of which may lead to the disintegration and decomposition of most of the States of modern times, it does stand for a sound and salutary principle in politics—the community or group idea.

#### A CONSEQUENCE OF THE NATION-STATE

One consequence of the enlarging of the size of the State through the nation is that many questions which were important in the small city-State are now become almost irrelevant. The division of the people of a State into citizens and non-citizens, the hostile treatment and rule of the latter as enemies, the principle of the Roman maxim *once a peregrine, always a peregrine*, would now be out of date when the foreigners settled in a State can be easily tucked away in a corner of the nation-State, although even now they obviously cannot enjoy all the rights, because they cannot assume all the obligations of citizenship. Similarly religious unity, the lack of which would have shattered the existence of the city-State, is not absolutely necessary for the life of the nation-State.

#### THE NATION-STATE CREATES MODERN INDIVIDUALISM

Another and a more serious consequence of the successful attempt made by the nation in realizing the idea of group life on a large scale was that it threw all other and minor groups into the shade. When community of language, of tradition and



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of life was realized so near perfection in the nation, it looked as if group-life did not require any other smaller form of social expression. The idea of nationality travelled the first great stage of its progress in Europe towards the end of the Middle Ages, when at the time of the Renaissance and the Reformation, Henry VIII in England, Francis I of France, Philip II of Spain, stood forth as the symbols of the nationhood of their countries. And that period saw the fall from power of one great group, the Church, which had held the allegiance of men in the Middle Ages. The decay of feudalism meant the decay of a whole system of groups. The political ideas of the Renaissance were deadly to those other groups of the Middle Ages, the Corporations. One by one they died or lived by favour of the State, which swallowed up their life, and the State alone was left as the one great Corporation, and the nation was left as the one great group.

## THE MODERN STATE BREEDS INDIVIDUALS

What the Renaissance and the Reformation had left untouched was killed by the French Revolution. Among the first institutions to go down before the steam-roller of the Revolution were the trading guilds and the religious orders. What need was there of these small finicky groups when there was the big nation to love and to worship. And wherever the ideas of the French Revolution travelled—and they travelled as far west as South America and as far east as Japan—group-life went down like ninepins. Thus it was that in Europe, except in such countries as England and Germany, where the idea of nationality was not so thoroughly realized as in France, there was only one group in the State. And as the nation was coterminous with the State, the State came to be considered to be composed only of individuals. The place formerly filled by smaller groups was now filled by single individuals. The State and the Individual came to confront each other, as the only beings that counted in the scheme of things political.

Together with the rise of the nation as the one group in a

State, there came also a growth in the liberty, the power of initiative, the capacity for development of the individual. For the growth of the nation had marked a victory over the dominating influence of guild, craft or corporation, which had kept down the free play of individual liberty and initiative. The history of individual liberty is much longer in England than on the Continent, where it dates only from the French Revolution, and will illustrate the thesis that individual liberty is safe where group-life is strong but not dominant. It was individual liberty and the general respect for law and order that lay at the foundation of that industrial inventiveness which led to the so-called Industrial Revolution in England. The remarkable wealth and prosperity which were the consequences of the application of individual liberty and initiative to the production of wealth evolved an atmosphere favourable to the enunciation and popularity of the thesis of Individualism.

Bentham and the Mills, father and son, formulated the new political gospel of the English people. The Individualists did useful and necessary work. Bentham rid England of a number of legal vanities, of age-worn procedure, of judicial crudities amounting to cruelties, and applied reason to the organization of social and political institutions. But the Individualist school destroyed, or rather attempted to destroy, for the tradition of English life was too strong for them, the group-life that stood between the State and the individual. The only things they would recognize were the State and the individual. What the individualistic Protestant had tried to do peacefully in England was done in blood and thoroughly on the Continent by the French Revolution and the Napoleonic Code.

#### BUT THE GROUP REMAINS

The group instinct is too strong, however, to be killed by schools of philosophy or codes of law. Individuals reduced to an atomic existence found themselves crushed by a towering Leviathan. And the individuals of the vast labouring masses found they were crushed between the upper millstone of State autocracy

and the nether millstone of capitalist plutocracy. The facts of the very life created by Individualism rose to slay it. Individualism had sown the seeds of the disease which came to kill it. The labouring classes felt that if they were to save themselves they must form new groups to guard themselves in the conflicts that arose between them and their masters. England set the fashion by forming Trade Unions. In France, where the work of destruction of group-life had been thorough, by a stroke of irony, Syndicalist groups have been formed which are so large and so powerful that they challenge the very existence of the State. The group idea, driven out by force, has come back with ten times its original strength and in a monstrous shape. That is what always happens when a good and fruitful idea or institution is driven out of the life of man by force or in deference to intellectual fashion.

#### POLITICAL IMPORTANCE OF GROUPS

Group-life is, it may be repeated, natural and necessary. It answers to the deepest instincts of man. It helps him to realize his social manhood. It exercises his political and social virtues. Patriotism, obedience, loyalty to the State, altruism, philanthropy, all these things that hold a State and Humanity together, are learnt in small groups like the family, the Church and the club. As Burke said, "To be attached to the subdivision, to love the little platoon we belong to in society, is the first principle (the germ as it were) of public affection. It is the first link in the series by which we proceed towards a love to our country and to mankind." One cannot think imperially if one does not think parochially. The life of organic bodies is derived from the life of the minor organisms of which it is composed. The higher the organism, the more numerous and more alive are its component parts. It is only the lowest organisms that are unicellular.

A State composed of individuals is as inert as a mound of sand or as dead as a heap of stones. Nor even is the individual safe in such a State. The individualistic State is the least

friendly to individual freedom. The State reduced to a collection of atomized individuals is least careful of the rights and liberties of the individual. In the conflict between the State and the individual, in such an individualistic society, the State can always command victory as it can defeat the individual in detail. The individual standing stark unprotected by guild or association or club or party must go down before the modern State.<sup>1</sup> If individual liberty flourished in England it was largely due to the fact that the individual's life was protected and guarded by one or more groups like the Church, the Guild, or the Corporation, or his class, his borough, his club, his university. If individual liberty is not so safe in France, it is thanks to the complete centralization of the government and the disappearance of those free voluntary groups which existed in France as elsewhere in Europe in the Middle Ages.

It is the group that gives life to the State and liberty to the individual. The group is needed for the life of the individual. It is in one or other of his groups that man finds himself, that he realizes himself. "Social psychology," says Miss Follett, "is beginning to show us that man advances towards completeness, not by further aggregations to himself, but by further and further relatings of his self to other men." The group is necessary for the organization of the large State of modern times, as it may not have been absolutely necessary in the small city-State of Greece. The modern State, like the mediaeval English House of Commons, is a *communitas communitatum*. And it is gratifying that the group is coming into its own in modern political thought. Miss Follett in her *New State*, one of the outstanding books of modern political literature, says, "From an analysis of the group must come an understanding of the common will and concerted activity of the true nature of freedom, the illusion of self and others, the essential unity of men, the real meaning of patriotism and the whole secret of progress and of life as a genuine interpretation which produces."

<sup>1</sup> Miss Follett, *The New State*.

## THE MAKING OF THE STATE

### RIGHT AND WRONG KIND OF GROUPS

Not that all groups have done well by the State, nor has the same group been always serviceable to the State. Caste in India is an instance of a group which, however justifiable in its origin and in its early history, has done great and untold harm to State and Society in India. The fundamental and beneficial idea of Caste is that the strength and solidarity of a society or of a State are secure only when its people and their life are organized in small groups that have a life of their own. The Brahmans gave a divine origin to the group idea and institution, whereas the Bible pictures the original man as only an individual. That is to their lasting credit. But the mischief of Caste lay in its groups being formed on the basis of birth and in their standing severely apart from each other, and in their claiming a perpetual existence in their original form. They were not the free and varied creation of man, but imposed on him by necessity, by the fact of his birth. And that is their condemnation. The Caste group, as Miss Follett observes of similar groups, and the Caste bond "had not within it the variety which the human soul needs for its nourishment." Caste is a horizontal, not a vertical division of society, and therefore without all the height and depth and connection and unity and therefore strength and variety that a vertical division gives. But because groups like the Caste groups are mischievous, it by no means follows that Society and the State in India can be organized without them. And the greatest mission of statesmen in India is to find some more life-giving groups than the Caste groups that are choking the life of the people. The formation of groups based on common fellowship of work, service and tastes, life, art and culture, rather than on birth and religion, which divide men from each other, seems to be the best way of killing the evil groups of Caste without destroying the fundamental idea of group-life which is so necessary for the health of the body politic.

## LAND AND PEOPLE

### HOW PEOPLE MAKE STATES

It is therefore as gathered in groups that we shall consider people as an element in the making of the State. If land is the foundation without which the State cannot exist, people are the architects and masons who build the State. If land is the canvas, people are the painters who fill it with form and colour. But these images would be false if they give the impression that people are the makers and creatures of a State in the same manner and to the same extent as architects and painters are creators of works of art. People are the makers of States only to a certain limited extent, and even artists are governed by the laws of their art and by the character of the material upon which they work. To a greater extent is a people bound by circumstance in the making of the State. Environment, physical features, climate, as we have seen, play a large part in determining the size, shape and government of a State. The land upon which the State is built, its configuration, its atmosphere, its soil, have a say in the matter. But they do not say the last word. Man can and does play an active part in the making of the State. He can and does react against circumstance. He has overcome the strength of environment.

### NATURE AND POLITICS

Climate, according to Montesquieu,<sup>1</sup> is the cause of the immutability of the religion, morals, manners and laws of oriental countries. A fertile soil, according to him, is generally governed by one and a barren land by several. Liberty, he says, reigns more secure in mountainous regions and in islands than in favoured plains or in the continent. But these theories of Montesquieu and his school, tested by the facts of history, vanish into thin air. Whether climate and other natural features exert any influence on peoples depends upon the character and civilization of these peoples. The more animal a people is, says Herder, the more is it in body and soul bound by its

<sup>1</sup> Bks. XIV-XVIII.

land and climate. Even Montesquieu acknowledges that it is only the savage that is in the grip of nature and climate. The ancient Egyptians, out of a waste of sand and morass, with their wonderful hydraulic art, harnessed the Nile and filled the land with innumerable canals, planted sugar-cane and palm, forests in plenty, made the soil yield three crops a year, filled the country with 20,000 towns and villages, and built those gigantic pyramids which have excited the admiration of the world ever since. The Nile was there no doubt, but the Nile would have been a thundering waste of water but for the skill of the Egyptians. The ancient Hindus, the Chinese, the European peoples settled in tropical countries, have in varying degrees of strength always reacted against the influence of climate and built great institutions and developed an enduring culture. It is only the savage tribes of Africa, the negroes excepted, the nomads of northern Africa and Central Asia, that have been overcome by the influence of Nature and have been the slaves of their surroundings.

## MAN MAKES AND UNMAKES STATES

Man's influence over Nature is proved also by the waste places of the earth that are due to his action. More than one fair garden land has been changed into a howling desert by his folly and negligence. Northern Africa, the great Arabian peninsula, Syria, Mesopotamia, Armenia and portions of Syria, Greece, Sicily and parts of even Italy and Spain were once, according to the direct testimony of history and the evidence of the ruins of buildings and public works that archaeology is daily unearthing, among the most fertile regions of the earth, and now are barren and solitary tracts. If man's environment were everything, the happy islands of Oceania ought to have produced some of the most civilized peoples of the earth. The vast continent of America, well endowed with mountains, rivers and lakes and a climate favourable to human life, did not produce more than two or three great States till the European conquest. If the land made the people, why should



Greeks have fallen from their high estate and Byron have asked

“You have your Pyrrhic dances yet,  
Where is your Pyrrhic phalanx gone?”

People can make or mar the State. A people, although not the absolute master, is still the architect of the fortunes of its State, the captain of its fate. But the question may still be asked: Why is it that some people have been more successful in overcoming circumstance than others? Why is it that some people have been politically more fortunate than others? Why is it that some people have built one kind of State and others have built other kinds? Allowing all that must be allowed for circumstance, environment, the physical features of the land, and historical accidents, there still remains a residuum of the fortunes of peoples that cannot be explained except on the hypothesis that the natural endowments of some people are not the same as the natural endowments of others. Why have some peoples not built States at all? Why have the Bedouins of Northern Africa, the Red Indians of America, the Tartar tribes of Central Asia refused to form States? The negroes of Africa and the Indians of America left some of the most fertile lands of the world undeveloped. Some people seem to be constitutionally incapable of the discipline necessary for the life of the State. Mount Stuart Elphinstone<sup>1</sup> was once assured by an Afghan that his people would be content with discord, alarms and blood, but never with a master.

No theory of environment, for instance, can account for the cruelty of the Assyrians, the family government of China, the Caste system of the Hindu, the love of beauty of the Greeks, the imperial instincts of the Roman, the ordered liberty of the English. It is as idle to inquire why one people should be by nature different from another as it is to inquire why one man should be different from another. There is, however, enough solace in the thought that it takes all kinds of peoples to form the world and to contribute to the development of

<sup>1</sup> *An Account of the Kingdom of Caboul*, etc., footnote, p. 179.

civilization and culture. But whether peoples are well endowed or not for the making of States, this much is certain that the right kind of people must come and fix themselves upon the right kind of land to form a State. It is not the marriage of any kind of people to any kind of land that will produce the State.

#### SOCIETY AND STATE

The people then, as we find them building States and living in them, are constituted, as we have seen, into various groups like the family, the class, the corporation. Political man before he lives the life of the State, and even while he lives it, is seen to live other kinds of life. He lives his domestic life in one group, his social life in another, his religious and moral life he may derive from a third. The life of the State is not the only kind of life known to or lived by political man. The sum-total of the life lived by him otherwise than as a citizen obeying laws, doing and refraining from doing things at the bidding of a government representing the State, is described by the word "Society." The distinction between State and Society has not always been accepted, though it may always have existed. The ancient Hindus, among whom the State occupied a very small part of man's life, unconsciously lived by this distinction if they did not formulate any theory around it. But the Greeks and the Romans deliberately ignored it. They confounded Society with the State. With them Society and State were coterminous with each other not only in fact, for that is obviously so, but in idea and jurisdiction. Although group-life did subsist among the Greeks, the groups were not independent of the State. Religion, morality, the family, the school were completely absorbed by the jurisdiction of the State. All this was changed by Christianity, which abstracted large portions of man's religious and moral life from the jurisdiction of the State. The results of this achievement of Christianity have subsisted down to the present day in spite of temporary aberrations and overclouding. The distinction between Society and the State is one of the accepted doctrines of modern

## LAND AND PEOPLE

political science. The great German writer Mohl<sup>1</sup> did much to incorporate it in German political teaching. And in practice and theory it is accepted everywhere nowadays.

### THE FREEDOM OF SOCIETY

The distinction becomes specially popular after any exorbitant and inordinate demands have been made by the State upon the allegiance of man, as in the late nineteenth and early twentieth century, in the period immediately preceding the Great War. Extreme assertions of State omnipotence lead the individual in sheer disgust and self-defence to assert that his soul is his own. He makes the State understand that it is only a means to an end and not an end in itself; the State is made to realize that there are more things in heaven and earth than are dreamt of in its philosophy. Man feels instinctively that his soul and his freedom are safe only when he lives a large portion of his life in groups outside the State. He refuses therefore to marry, bring up his children, earn his livelihood by leave of the State. The works of man do not wait for the grace of the State. Agriculture, Industry, Commerce, are not the work of the State, though the State with good laws might make them possible and fruitful. Man can be moral without the State's intervention, although formidable obstacles to morality must be removed by the State. It is good for the State to foster religion, but religion does not thereby become the handmaid of the State.

### THE STRENGTH OF BOTH NECESSARY

Man's life in society is one of the outstanding facts of politics. Society is neither the subordinate nor the superior of the State. It is one aspect, one chapter of his life on earth. Society stands for the community life of man, the life of social partnership and fellowship, of mere human comradeship. The State means authority, subordination, coercive and universal laws. Both are necessary for man's life. Without the group-life that

<sup>1</sup> According to the testimony of Frantz in *Naturlehre des Staats*; the monumental work of Gierke on Corporations would be enough evidence.

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Society embodies man would be a wheel in a machine. Each is necessary to the other. They rise and fall together. The simpler the Society, the simpler the State. The more developed the State, the more complex the organization, the wider and more varied and more plentiful is its social life. Without the subjection of the State man would be the sport of circumstance, a wanderer on the face of the earth. Society stands for the freedom and progress of man. The State, as its name itself implies, stands for all that is stable and permanent. But without the freedom and variety of Society man would be only a political animal. Society, on the other hand, comes from companionship and all the life and movement that companionship implies. Without Society man would lose his soul; without the State man would not be able to save the body which is the home of his soul.

### III

## RELIGION AND THE MAKING OF THE STATE

“Chi ha fede conduce cose grandi.”

GUICCIARDINI, *Ricordi politici et civili*.

#### IMPORTANCE OF RELIGION

Napoleon Bonaparte, speaking one day to the friend of his exile at St. Helena about the days of his imperial rule, said, “As soon as I obtained power, I set about re-establishing religion. I made use of it as base and root. It was in my eyes the support of good morals, of true principles and of civilized manners.” On another occasion he said he could never understand how people could be ruled without religion. On yet a third he proclaimed his belief that order in a State was impossible without religion. This belief in the service of religion to the State, shared by the greatest maker of a State of modern times, and expressed by him on different occasions in consistent conviction, is proved by the history of the making of the State in all ages and in all climes. Although religion, we shall see, is necessary for the life of the State at every stage of its existence, it is vitally necessary for it in its infancy. A typically modern scholar, Sir J. G. Frazer, has devoted the whole of one of his popular books<sup>1</sup> to this thesis. Only he calls it superstition or magic. What appears to be superstition or magic to the modern scientific mind was as real and as holy to these primitive peoples as religion is to us. Primitive man was not as scientific and self-reliant as Frazer’s theory of Magic preceding Religion as an influence on the conduct of man would have us believe. It is a chronological mistake to speak of ancient religious beliefs as superstition or magic. Primitive religion, eked out and supported by magic, was religion all the same. However that may be, Sir J. G. Frazer

<sup>1</sup> *Psyche’s Task*, by Sir J. G. Frazer.

has produced evidence<sup>1</sup> from all over the world to show how the State and the many important institutions necessary for its existence have been strengthened and consolidated by religious belief.

POLITICAL OBEDIENCE TAUGHT BY RELIGION

One of the first problems, if it is not the very first, with which the founders of States are concerned at its birth is how to induce among their subjects that obedience to a common authority without which social order and the State cannot exist. Political obedience, which is taken so much as a matter of course in modern well-ordered States, was a difficult thing in primitive times. The most common way in which it was established was by the divinization of authority. The authority of a primitive government was generally vested in a single chief. And his authority was likened to that of a god, if he was not often likened to a god. "Among many peoples," says Frazer, "the task of government has been greatly facilitated by a superstition that the governor belongs to a superior order of beings and possesses certain supernatural or magical powers to which the governed can make no claim and can offer no resistance." Among the Melanesians, for instance, in Fiji, in Polynesia, i.e. in New Zealand among the Maoris, in Africa, i.e. in Loango, and among the Kaffirs, the chief was credited with supernatural powers.<sup>2</sup> The Pharaohs of Egypt were treated as gods both in life and in death. The Incas of Peru were considered by their subjects to be incapable of any fault, even of sin. From *Manu* we learn that, among the ancient Hindus, kings were believed to have been formed of particles of the gods, and that they were Fire and Wind, Sun and Moon, Yama, Kubera, Varuna and Indra all in one. Nor is this belief in the supernatural powers and attributes of kings absent from among the ancestors of the peoples of Europe. Greek rulers were often spoken of as gods, but then Greek gods were often as human as Greek kings.

<sup>1</sup> *Psyche's Task*, by Sir J. G. Frazer.

<sup>2</sup> *Ibid.*, ch. 2.

## DIVINIZATION OF AUTHORITY

A good king was supposed by the ancient Swedes and Celts to be the bringer of rain and abundant crops. The king's evil eye and the king's touch, to which Dr. Johnson bore testimony as a child, were eighteenth-century survivals of this old belief in the divine attributes of kings. The States and nations of the Middle Ages had each its patron saint, St. George for merrie England, St. Stephen for Hungary and St. Denis for France. The assertion of the theory of the Divine Rights of Kings in the full blaze of the Aufklärung of the Renaissance and of the Reformation, when James I of England claimed that "kings were called gods by God," and Dr. Mainwaring, an English divine, could say that subjects could not disobey the command of the king "without hazard of their own damnation," can only be explained by the conviction that came over a body of men that only by attributing divinity to the power of the monarch could social order be saved from imminent ruin. It incidentally shows that attempts to divinize political authority are not peculiar to primitive times, but may recur whenever political authority is in dire danger.

## RELIGION AND PEACE

Next to the existence of a common authority, what is necessary for the life of a State is the peaceful relationship of citizens with one another. The rights of each, especially the greatest right of all, the right to live, must be maintained. Political life is essentially a peaceful life. War, however necessary and justified by circumstances, is a terrible interruption of that life. Murder, therefore, is the most anti-social of crimes, and ancient peoples instinctively realized it. Not only their custom and law, but their religion condemned it as being the most destructive of crimes. The ancient Greeks believed that the murderer had to be banished from his country, to which he could not return till sacrifice had been offered and purificatory ceremonies performed. Orestes pursued and maddened by the



ghost of his murdered mother was the symbol of a murderer finding no rest on earth. Among the Chinese the faith in the existence and powers of the dead "enforces respect for human life and a charitable treatment of the infirm, the aged and the sick."<sup>1</sup> The fear of the ghost of the slain tormenting the murderer has exercised a wholesome respect for human life among primitive savage tribes like the Karens of Burma, the Papuans of Dutch New Guinea, the Bhutias of the Himalayas and a host of others.<sup>2</sup> For the crime of murder Manu prescribes not only secular punishment, but religious penance of great severity. Among the Hebrews Cain was banished from the city for the crime of murder, and a sign was put on his head by God so that all men could see and shun the enemy of human society.

#### INSTITUTIONS PROTECTED BY RELIGION—FAMILY AND MARRIAGE

Like government sustained by obedience and social order, other social institutions were in the beginning of things brought under the aegis of religion. Family, Marriage, Property were from the beginning sanctified by religion. The family and religion went together among all ancient peoples. "*Pro aris et focis*," although a Roman cry, was the flag around which ancient peoples lived and died. Before the Christian Church was established and even now outside it, religious worship was essentially a family ritual. The sacred fire of the Iranians was kept alive in their homes. The first Aryan priest in India was the family purohit, and even now among the Hindus the great religious ceremonies are connected with the chief incidents of family life. Whatever progress the ancient social life of the Hindus underwent was due to their religion. Although hard sayings may be uttered of Brahminism in modern times, it must be remembered to its credit that it was Brahminism that transformed the Aryan tribal ownership of property into individual family ownership. And the Dayabagha system of law, which owed more to the influence of Brahmins, is more favourable to individualism than the Mitak-

<sup>1</sup> De Groot, quoted in Frazer's *Psyche's Task*.      <sup>2</sup> Frazer's *Psyche's Task*

shara. Sir Henry Maine has pointed out how Christianity also dissolved tribal ownership among the German barbarian tribes through the Will of the Testament. The family in China was consecrated by ancestor-worship. At least three of the ten commandments handed over from God to the Hebrews by Moses were concerned with the family. The sacred fire also burnt in the centre of the Greek home. The most frequent gods among the Romans were the Lares and Penates. Marriage among all these people was considered to be a religious sacrament consecrated by religious ceremony, placed under the auspices of the gods.

Among those peoples which have suffered from sexual laxity, a stricter code in regard to chastity was, according to Frazer, induced by a belief that sexual irregularities not merely disturb directly or indirectly the course of nature by blighting the crops, causing the earth to quake, volcanoes to vomit fires, but cause the delinquents themselves, their offspring or their innocent spouses to suffer in their own person for the sins that have been committed.<sup>1</sup> Ancient codes of law which were a chapter of the Scriptures like the Dharmasastras of the Hindus, and the Mosaic code, and even the secular laws of Hammurabi, inflicted the most terrible punishments on those acts that broke the bonds of monogamous marriage. Ancient law was more impartial than modern law, for it decreed equal punishment to the man and the woman. Manu decreed that the adultress should be devoured by dogs in a market-place and that the adulterer should be roasted to death in a red hot iron bed. Hammurabi ordained that the adulterous couple should be strangled and cast into the river; while the Mosaic law condemned both the adultress and the paramour to death.<sup>2</sup> The awful story of Oedippus portrays, according to the belief of primitive peoples, the terrible results that follow even an unconscious transgressing of the laws of family life. Not only the

<sup>1</sup> See Sir J. G. Frazer, *The Golden Bough* (abridged edition), chs. XI, XX, for examples.

<sup>2</sup> Frazer, *Psyche's Task*.

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relations between man and wife, but those between parent and children were regulated by ancient religion. "Honour thy father and thy mother" is one of the most important commandments given by God to man through Moses. The reverence paid by children to their father in a Hindu household, none of whom even now in orthodox homes dare to sit down before their father, is an ancient reverence. The authority of the father in the primitive family prepared the way for the authority of the rulers of the State. "Without parental authority," says Vollgraff, "there could have been no governmental authority; without filial obedience, there could have been no political obedience."<sup>1</sup>

### RELIGION PROTECTS PROPERTY

Next to marriage and the family system, property, as we shall see, is one of the fundamental institutions of life in the State. It is one of the things the protection of which the State ensures. It was well for property and the respect with which men came to look upon it that early in the history of peoples it was taken under the wings of religion. The whole system of taboos among the peoples of Polynesia, Africa, South America was raised to build up a respect for property. Stealing was considered to be a breach of the taboo covering a piece of property attended by dire consequences, and prevented by a fear of something terrible happening to the taboo-breaker. In Polynesia, among the Maoris, in the Marquesas Islands, in Samoa, in Melanesia, in the Malay Archipelago, "a frequent device to protect private property was to put it under a taboo, and it was safe till the taboo was removed."<sup>1</sup>

### SOCIETY AND STATE UNDER THE WINGS OF RELIGION

Not only were political obedience, peaceful social intercourse and the necessary social institutions of marriage, family and property put under the fostering care of religion, but ancient religion took Society and the State as a whole under its protection. The Greeks and Romans placed their cities under the

<sup>1</sup> Vollgraff, *Polignosie und Polilogie*.

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protection of one or other of their deities. Every great city, as Vollgraff<sup>1</sup> calls it, was a consecrated temple, turned to the four ends of heaven, the upper end being sacred to the gods of heaven, the lower to the gods of earth, in the centre standing the temple of Vesta. The temple was one of the centres of Greek city life, like the Acropolis of Athens. The city-State was founded with the building of a temple, and when Greeks went to found colonies, the most precious things they took with them were their gods, whom they established in the new foundation. The Romans, although they were among the most positive and practical peoples of history, realized from the very beginning the value of religion in the making of the State. Not only the gods, but the walls of the city, the boundaries of private property, the very stones, the trees, the ditches, the crops of the field were placed under the protection of religion, and he who breached the walls of the city, or meddled with its boundaries, or stole the crops, infringed not only the laws of men, but incurred the wrath of the gods.<sup>2</sup> Not only every family, gens, curia, and tribus had its own guardian deity, but the State as a whole was placed under the protection of a god, Jupiter Capitolinus. The nymph Egeria, the inspirer of Numa, represented the influence of religion on the making of the Roman State. Religion was an affair of State, and kings and consuls offered sacrifices or read the auspices on behalf of the people. A temple was the meeting-place of the Senate.

### POLITICAL FUNCTIONS AND DUTIES SANCTIFIED BY RELIGION

Public functions as well as private obligations and international arrangements were consecrated by religious oaths. Crime and Criminal Law especially were put under the protection of religious sanctions. For certain crimes a man was treated as *homo sacer* and sentenced to *aquae et ignis interdictio*. Religion also softened the harshness of antique punishment. The domestic altar and the temple offered sanctuary, and the

<sup>1</sup> *Polignosie und Polilogie*.

<sup>2</sup> Ihering, *Geist des Römischen Rechts*, Vol. I, Sect. 18.

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Saturnalian feast and the visits of the *flamen dialis* were occasions for the setting at large of prisoners.<sup>1</sup> Ihering has shown that the influence of the College of Pontiffs on Roman civil and criminal law has been as great as was that of the Church on the development of law in the Middle Ages.<sup>2</sup>

### RELIGION AND THE SOCIAL INSTINCTS

Although Rousseau's dictum that "among the peoples of antiquity religion begat the State" is an exaggeration, there can be no doubt that it furnished to them the strongest bond of union. The social instinct by itself is not sufficient to keep ancient society together. It suffices to bring men together to live the social life. But it cannot by itself keep them there. The anti-social impulses of men try to break society asunder. Man's egoism, his selfish greed, the lust for power, the temptation to dominate his fellows, ever tend to undermine the foundations of social life. The history of ancient society is one long struggle between the social and the anti-social instincts of man. And in this struggle the social instincts find in religion their most potent ally. By the mere effort to conquer the egoism of the individual, by preaching charity and equality, by inculcating peace as the normal way of life, religion has preserved the foundations of society from sagging.

### RELIGION AND POLITICAL UNITY

Religion, by turning man's eyes away from himself and on to another Being, who is proposed to him as the sun of his existence, acts as a lodestar that draws society to high and noble ends. By imposing on man the same uniform beliefs about himself, God, his relations with God and with his fellow men, it acts as a leash holding men together in society. Teaching sacrifice of self, grace and charity and love, it adds to the bonds of union that common descent, custom and law furnish to man. Imposing upon him belief in the existence of another world, it brings the living and the dead together in an eternal partner-

<sup>1</sup> Ihering, *Geist des Römischen Rechts*, Vol. I, Sect. 18.

<sup>2</sup> Ibid., 18a.

ship and ensures the continuity and perpetual life of society. Training men to obey a superior Being and its representatives on earth in matters affecting their relationship towards each other, it makes the yoke of political obedience tolerable to them. Through its common worship and its unions and feasts it brings its votaries into frequent social contact with each other. It strengthened man in social life. It strengthened the hand of man in his struggle with Nature and the brute creation. But for the courage and confidence which primitive man derived from religion, how could he have waged a successful war against flood and forest, the wolf and the tiger? The Vedic hymns are charged with the fears of Aryan man confronted by the forces of Nature in primeval India and with the prayers to the gods to help him in the unequal battle. Without those brave heroes who tried to conquer self with a view to conquering Nature, the Rishis and the Vanaprasthas of ancient India, the impenetrable forests of those days could not have been reclaimed for civilization. Even now, with all the scientific knowledge and defences of to-day, there are moments in the tropics when man shudders and trembles at this or that exhibition of Nature's temper. What must it have been when man stood alone and naked against some towering mountain or violent flood or angry thunder or blinding lightning? He would have been overwhelmed if religion had not steadied his hand and put courage into his heart.

#### RELIGION A UNIVERSAL FACT

It is true that the nineteenth century sociologists based their view on the nineteenth-century information that there were many primitive peoples in whom the religious instinct was absent. Without going so far as to say that there is absolutely no people without religion, modern research has thrown doubts on the theory, since it requires a profound knowledge of the language and customs and ways of thinking of a savage people to probe the savage mind and see it as it is. And religion may exist, albeit in a vague and inchoate fashion. It may be that most



peoples make their own religion, and as Sir James Frazer has shown, the reverence for wild animals and plants, the reverence for domestic cattle, and the reverence for cultivated plants correspond to the hunting, the pastoral and the agricultural stages of history.<sup>1</sup> Religion from the beginning of man's life, and especially at the beginning, has filled such a large place in man's life that it is not surprising that it has influenced profoundly the formation of society. It is so clearly intertwined with the life of man that it must have determined the form and character of the evolution of society. If religion did not give birth to society and the State, it largely made them what they have become. Ancient peoples realized this truth themselves and have acknowledged their debt to religion in no mistakable terms. The Egyptians attributed their whole culture and civilization to Osiris, who taught them agriculture, Isis who gave them laws and taught them justice, and Ammon who begat their kings. Ancient Hindu tradition attributed its most characteristic and most important social institutions, Caste, to the Creator, and Hindu orthodoxy has ever since built it on a religious belief. Roman Law and State were from the beginning strengthened by religion by means of its pontiffs, its auspices, its oaths of office. It is true that religion by itself has not and could not have made the State. Force perhaps was more necessary at the beginning. But Force, which may often be used as the only way of cutting the Gordian knot of political trouble, cannot be the ordinary means of keeping the State together. A State which had force only as the bond of union would be in a perpetual state of war and kept too much on the jump to devote itself to the development of freedom and progress. "A people without religion are an ungovernable people," said George Washington. The State has been forged by the sword but it has been blessed by the censer.

#### SOME ILLUSTRATIONS

Although there is no doubt that religion did play a determining

<sup>1</sup> Frazer, *The Golden Bough*, Part V, "Spirits of the Corn and the Wild."



part in the making of the State, yet it is only of a few religions that a historian of the State need take any notice. Tribal religion governed only tribal polity, and like that of the Celts and Britons in ancient Britain was as petty as the tribe, being a religion of local gods and goddesses haunting particular trees, or springs and rivers. Frazer's theory of Magic is applicable only to the tribal condition. Religion marks the beginning, as it influences, the history of the State. To realize the influence of religion upon the State we need take account only of the religions of the great peoples of history that have made States. But even among them we must select. It would little suit our purpose to study the social value of the religions of the peoples that have disappeared from history, like the Aztecs, the Peruvians, the Mayas or the Sumerians. Choice is necessary, and we would do well to confine our attention to the religions that still govern the conduct of the peoples that have survived. Only as an example of what ancient religion did we might study the influence of religion in ancient Egypt.

#### EGYPT

The Egyptians were made not only by the Nile but also by their religion. They are religious to excess, far beyond any other race of men, says Herodotus of them.<sup>1</sup> A common cult, common religious feasts made the people one in spite of their division into castes. The Egyptian priests when offering their sacrifices prayed to the gods to turn away evil from the whole of Egypt and of the Egyptian people.<sup>2</sup> The law and ritual of religion was common to all the classes. The respect for the dead shown in the mummies and the wonderful monuments raised in their honour still further strengthened this social solidarity. For remembrance of the dead keeps the living united, not only in families but also in States. The belief in one supreme Being, Ammon Ra (or Aten for a brief space of time about 1375 B.C.<sup>3</sup>) or Osiris, in spite of a pantheon of local gods, contributed largely to the

<sup>1</sup> Bk. II. 37 (Rawlinson's trans.).

<sup>2</sup> Herodotus, Bk. II. 39.

<sup>3</sup> Under Akhenaten or Ikhnaton.

social unity of the Egyptian people. Although slaves existed in Egyptian society, a remarkable law inflicted the death penalty for the murder of a slave as well as for that of the freeman. How much influence religion had upon the constitution of ancient society is proved by the fact that while castes existed in Egypt as in India, they were not exclusive of each other, for a priest could in Egypt become a warrior and vice versa, and castes were purely occupational and not based on marriage taboos, whereas in the other country they were based on birth and God's decree and therefore were eternal and uninterchangeable. The stationary and unprogressive character of the Egyptian State was accounted for not only by the routine and never-failing work of the Nile, but by the religious belief that they were a chosen people, sufficient unto themselves and therefore repelling contact with new ideas and other peoples. The sea to the Egyptian priest was an impure element, the domain of Typhon.

#### ANCIENT INDIA—HINDUISM—POPULAR KARMA

Among the peoples of antiquity that were formed by religion, the ancient Hindus offer a still more striking example. The special features of the Caste system, the most important institution of Hindu India, its iron rigidity, the perpetuity and uninterchangeability of its classes, were determined by the religious doctrine of Karma. And it is Karma which is the popular religious idea of Hindu India. Karma is the explanation of life and life's incidents which comes easily to the lips of the prince in his palace, the Brahmin administrator in his office, the peasant among his ricefields and the Bania in the bazaars. A man was bound to his Caste and its duties and obligations by the decree of fate in the form of his previous lives. His life is bound to the past and the future by a chain of *samsaras*. The bounds of his Caste it would be not only impolitic but impious for him to transgress. The essential idea of Caste is division, and that there is no bar to the multiplication of castes beyond the four of the books is proved by the facts of history

and contemporary experience in India. The doctrine of Karma does not lead to this multiplication, but maintains the numerous divisions of Indian society rigid and impassable once they are made. The idea of multiple and inelastic divisions in Indian society projected itself into the political domain. Hindu India has been always a country of numerous small States, never of one State. The efforts of its great rulers Chandragupta or Samudragupta or Harsha to unify India have always beaten in vain against the rock of division planted in Hindu society. Polytheism is the popular cult in India, and polytheism divides here as in Greece.

#### ARISTOCRATIC PANTHEISM

Side by side with a popular polytheism there was cultivated a philosophy of pantheism, now popularly known as Vedanta, which was the property of the aristocracy of thought. Pantheism is the higher criticism of Hindu thought.<sup>1</sup> The Vedanta, with its doctrine that God is all and all is God, may at first be taken to lead to a unified social life. But an aristocratic pantheism has never been inimical to popular polytheism. For the unity of pantheism is so great and blinding that common men prefer the lesser and more helpful lights of polytheism. To the leaders of Hindu society the greater unity of the Vedanta has confounded and made null and void in idea, and therefore tolerates in practice, the divisions of Caste and the diversities of creed and culture. The philosophy of the Vedanta has not nerved the leaders of Hindu society, ancient or modern, to work for the abolition of Caste. Aristocratic pantheism and popular polytheism have both allowed India to be several and separate. But whether through pantheism or through polytheism, the pre-occupation of Hindu India has always been religious and just the barest minimum of attention was devoted to the life of the State.

<sup>1</sup> Professor Radhakrishnan acknowledges that according to the philosophy of the Upanishads "the universe is in God," and that God is not the external creator existing separate from the world (*Indian Philosophy*, ch. IV).

## THE MAKING OF THE STATE

### INDIAN RELIGION AND INDIAN HISTORY

The absence of historical literature belonging to ancient India has been deplored ever since the beginning of Indian research. But, as Laurent<sup>1</sup> says, history is the manifestation of man in space and time. Man indeed did manifest himself in space and time in India. But, according to Hindu ideas, the time was one very small part of a very large whole, which was eternity, and the space was only one of the many stages on which he had to play a part. This life was one of a series of lives, and there was nothing to show that it was the most important of that series. By the side of the great reality that was God, this world was Maya. "The fundamental belief which supports the whole edifice of Hindu thought," says Sylvain Levi,<sup>2</sup> "is before all the transcendental unreality of the world of phenomena." Was the history of Maya worth while writing? The religious pre-occupation of the ancient Hindus combined with their philosophy of life conspired to deprive their literature of history. Moreover, as Lord Acton insisted, there must be progress to create history. Hindu society and State were too stationary to have any history written about them. What do the best of the Hindu chronicles like the *Rajatarangini* or the numerous inscriptions that are being discovered chronicle, except the founding of temples, the endowments of Brahmins and purely administrative acts like the building of tanks or the petty and routine acts of village society. The few revolutions that occur from within Hindu society, like ancient Jainism and Buddhism and modern Vaishnavism and Sikhism, did little to alter the structure of Hindu social life.

This, however, is not to deny all sociological value to Hinduism. By displacing the petty Animism, the archaic magic of the aboriginal tribes by the idea of the Absolute and of Oneness, Hinduism rendered memorable service to India.<sup>3</sup> No one can deny all social value to the typically Hindu doctrine of

<sup>1</sup> Laurent, *Études sur l'histoire de l'humanité*, Vol. I.

<sup>2</sup> *Revue de Paris*, February 1925.

<sup>3</sup> Christopher Dawson, *Religion and Progress*, ch. VI.

Karma. It acts as a restraint upon the passions and gives a seriousness to the individual's life. It binds the past and the present and future generations of men with the golden chain of morality. But while it emphasizes one aspect of man's responsibility, his dependence on the past of his race, it holds out little hope to man to be the maker of his fate or the compeller of fortune.

The very other worldliness of Hinduism gave it a lever with which to turn society. It has always called upon the individual to sacrifice his egoistic impulses at the altar of a higher self. The ideal of Hinduism is the union of the Atman, the individual soul, with Brahman, which is the universal soul. The immortal glory of Hinduism is that it was the first to discover the Absolute in religion and philosophy and taught the vanity and delusion of all besides. The world, treated as Maya, was never too much with the Hindu. Introspection, the method of Indian philosophy, will always prevent the Hindu from becoming the slave of matter. But to dominate matter and the world it is not enough to refuse to be its slave. That is something, but more is required of man if he is to be the master of his fate. The Absolute of the Hindu was negative, as Vladamir Soloviev,<sup>1</sup> the Russian philosopher, points out, a denial of matter, rather than an affirmation of the spirit. Man must vanquish the world. To do so he must be in the world, if not of it. But the method of Hindu renunciation is the obvious one of fleeing from the world. The forest, as Tagore points out, is the background of Hindu literature. It is also the background of Hindu society. It is the refuge of those who desire the higher life. For social peace there must be peace in the individual soul and a detachment of the individual from society, even from his own good works. But to call doing good to others a delusion, and to ask people to escape from the routine of good works,<sup>2</sup> is hardly an incentive to right action. Atman need not be silence, as Bahu, driven to a corner by the persistent questionings of King

<sup>1</sup> Vladamir Soloviev, *La Russie et l'Église universelle*.

<sup>2</sup> As does the Holy One in *My Brother's Face* by Dhan Gopal Muherjee.

Vaskali, said it was. The Hindu idea of salvation (moksha or mukti) is liberation or deliverance,<sup>1</sup> not fulfilment, as is the Christian idea. To say No to matter and the world frequently is no doubt the secret of moral and social perfection. But Neti, Neti, an everlasting Nay, is no answer to the questions of social or political life.

It would, however, be as unhistorical as it would be unphilosophical, to lose sight of the fact that Hinduism is not one organized uniform system of religion. Here and there one finds religious and philosophical ideas of the highest social value, as that of the unity of all creation and the doctrine of the Avatar, or in the Bhakti devotion to a personal god of the Tamil country, charged with hope for erring man. And the task of the Hindu religious and social reformer is to select from the vast and dim-lit *alyams* of Hinduism ideas and doctrines that will answer the social needs of modern India and build them into a uniform and universal system of belief for all Hindus.

#### NEGATIVE SERVICE OF HINDUISM

Hinduism has also rendered this negative social service that it illustrates the truth, that when religion tries to do more than it can, it hurts rather than helps society. When religion goes beyond the moral and spiritual making of man and tries to form his society and State, instead of merely inspiring it with ideals, it strangles society and State. The Hindu Shastras dared to influence the social and economic life of the individual, and the result has been a lack of initiative, freedom, and progress, which has kept Hindu society where it was centuries ago. Religion has given its sanction to the customs and habits of past ages long after their utility had passed. It is only at the peril of ruining society that religion tries to oust reason from the rule of the State.

#### BUDDHISM

Of the many offshoots of Hinduism the greatest was Buddhism.

<sup>1</sup> Radhakrishnan, *Indian Philosophy*, ch. "Philosophy of the Upanishads," p. 209.

But Buddhism is one of the great might-have-beens of Indian history. This religion, which, if it had abolished Caste, might have brought about the unity of India, did nothing to undermine the doctrine of rebirth which was the inspiring idea of Caste. Buddhism had a chance of showing what it could do for the country in the six hundred years of its flourishing existence, from about 300 B.C. to A.D. 300. No one can deny that Buddhism brought a new spirit into Indian life and thought. It taught kings and peoples to love peace and toleration. It preached equality between classes and persons and charity to all. It preached against the inequality of Caste and substituted individual and personal morality for the morality of Caste. It was founded by a personality, and a new note of personality, unfelt before, entered with it into Indian history. It substituted the morality of good works for the morality of good birth. It threw open the doors of its religious orders to the high born and the lowly. Buddhism has certainly enriched individual and social life. Indian art dates its beginnings from the Buddhist period. Sculpture, unknown before Buddhism, enters the field of art in India. It softened the attitude of the rulers to the ruled and modified the cruelty and partiality of the penal code of Manu. It introduced the spirit and institutions of self-government in its religious organizations. The State certainly obtains a new impulse from Buddhism, and Buddhist States are certainly larger than those founded by the Aryans in Madyadesa. But political life which it enriched with one hand by promoting social unity it served to impoverish on the other by looking upon it as upon every other kind of human desire, as something which must in the course of time be snuffed out of existence. To make use of a modern expression, Buddhism strove to absorb the State into the Church. And for all the beneficial work that it did, Buddhism did not profoundly modify the basis of Hindu society which resumed its form and spirit as Buddhism disappeared from the country.

Its doctrine of renunciation did not make the people more practical than they were under the Brahmins. In fact the danger



of the people being made unfit for the government of themselves was even greater under Buddhism, because it offered the ideal of Nirvana to all and sundry, and did not confine it to a select few or to most in the evening of their lives as did Brahminism. The extinction of desire, and not the controlling and canalizing it for the higher ends of man, was the ideal of Buddhism. The problem of life was to be solved by a renunciation of life. Instead of reforming society from within, it formed a society of its own in cave temples and on mountain-tops. Although it preached against the idea of Caste, it left the institution untouched. The fact is that Buddhism was too other-worldly to affect Hindu society. In its philosophy and in its action it was only Hinduism raised to a sublimated degree.

The failure of Buddhism to reform Hindu society is all the more to be deplored when we contemplate the great and fundamental work it did for more primitive peoples than the ancient Hindus. Buddhism it was that made of the Siamese a political people, taught them, according to their own tradition, ways of peace and agriculture and substituted social life for devastation and pillage. Tibet owes its civilization to Buddhism, as did the nomads of Tartary. It looks, therefore, as if Buddhism could work well on a clean slate and with a people that had not already built a civilization of its own. This is shown not only by a comparison of the work it did for India and the work it did for these more primitive peoples, but also when we survey what it was able to do for China. Here, as in India, Buddhism came to play its light upon a people which already had a civilization, a morality and a religion of its own. Here also its influence on the country was of the same kind as in India. In China, as in India, Buddhism humanized the government and the people. It was a Chinese Emperor, Ming-Ti (A.D. 58-76), converted to Buddhism that abolished the penalty of death. It certainly imparted moral fervour to the life of one of the most positive and materialistic peoples of the earth. It inspired, for instance, the voyages of research and piety of Chinese pilgrims, like Fa-Hien and Hiouan-Tsiang, such as had not been under-

taken before under the inspiration of a Laotze or a Confucius. Buddhism certainly gave a new tone to Chinese society. But when we ask whether it did anything to alter the fundamental structure of Chinese society, we must return the negative answer we did in regard to India. It could not acclimatize celibacy or the monastic life in China. Nor did it affect the ancestor worship or modify the family life of the Chinese. As in India, Buddhism provoked the hatred of the lettered classes, and the Mandarins, like the Brahmins, succeeded in keeping the influence of Buddhism within bounds. The truth of the matter seems to be that the social and political influence of Buddhism is limited. It works with a new people. It just breathes a breath of peace and moral fervour over old and sophisticated peoples. It holds aloft to all the banner of equality and liberty and charity, but does not beat and batter people into them. As a means to moral progress it has freed its devotees from the tyranny of desire. Its influence is in the direction of humanity, refinement and peace. It is not in the direction of social organization or of political progress. Buddha, consulted about the fate of the Vajjians, said: "So long as they enact nothing not already established, abrogate nothing that has been already enacted and act in accordance with their ancient institutions as established in former days . . . so long may the Vajjians be expected not to decline but to prosper."<sup>1</sup> It has not been accepted by active, virile and expansive races. Gibbon<sup>2</sup> tells us that when the Turks were offered Buddhism, they said "it was not the religion of heroes, as the bonzes preach only patience, humility and denial of the world." Its influence is more personal than institutional. It has done more for man than for society or the State.

#### THEISM—THE JEWS

Hinduism and Buddhism belong to what for need of a better word we may call the pantheistic class of religions, which

<sup>1</sup> Dialogues of Buddha, quoted in Jayasval's *Hindu Polity*.

<sup>2</sup> *Decline and Fall of the Roman Empire*, Vol. IV, ch. XLII, World's Classics edition.

refuse to assert the unity and the separate existence and the creative function of God and the separate personality of man, and which try to reconcile the paradoxes that cluster round any account of the origin of the world in the saying: All is God and God is all. The other class of religions which divide the allegiance of man in history are the theistic, which assert the personality and the creatorship of God. First among the theistic peoples of history are the Jews. It is they that first asserted God to be one and a creator. The attempt at monotheism of Ikhnaton of Egypt ended in miserable failure. Not that the Jews were always true to this idea. Their priests and prophets from Moses onwards had to remind them of it in words that sound like lashes even to us who read them only in translations. But that was the idea which animated the best and most characteristic epochs of their life. The idea of the unity of God was inculcated to the Hebrews by the argument that Jehovah was their own God, their father and their friend. They were His chosen people. He was the real and ultimate ruler of their polity. The kings and judges and prophets were only His vicegerents. As Laurent<sup>1</sup> says, the Jewish State derived its principle of life from Jehovah. The secular duties of the Jews were really religious duties. Profound and deep-rooted belief in the unity of God led the Jews to consider themselves, and in fact all peoples descended as they were from Adam and Eve, to be one. All were equal before God. The Jews knew no caste. It is true a special tribe, the Levites, were dedicated to the service of religion; but any Jew could be called by God to be a prophet and lead His people. Equality before God led to civil equality. The famous Jewish institutions of the Sabbatical year when slaves were liberated and of the Jubilee when land was redistributed were intended to remedy the infractions of this equality which are inevitable in the history of society. The Jewish slave was not the thing he was in Greece or Rome. The unity and equality that contributed to the building of the Jewish State were imposed on the Jews

<sup>1</sup> *Études sur la histoire de l'humanité*, Vol. I.

by their religious ideas. But to preserve this belief in the unity of God in the polytheistic atmosphere by which they were surrounded, Moses and his successors had to isolate them from the rest of the world. They had to be reared in solitude. They were consumed with the belief that they were a chosen race, that they were separate from the rest of mankind. Contact with the rest of the world would only soil them. That is why, like all peoples that think themselves elect, they refused to share their beliefs with others and propagate them all over the world. That is why they refused to see the Light, although it came from their midst. They allowed other peoples to take up the torch of truth and progress from their hands. Although as individuals the Jews have in modern times distinguished themselves as leaders of thought and action, as a people they seem to have cut themselves off from the main stream of history. But history will always pay a tribute of praise and remembrance to this people, who in the clear air of the desert and in an age of polytheistic division, held to faith in the one God, Father of the human race, and handed the lamp of that faith to the peoples that have made the history of the world that we live in.

## ISLAM

What the Jews were not able to do for other peoples, another Semitic people was to accomplish. They were the Arabs. They in their wonderful advance of conquest and conversion east and west, spread the idea of the unity of God among the idol and fetish worshipping populations of Africa and Asia. Their religion, Islam, is one of the few religions that have made their people in their own image. No other religion has so thoroughly moulded in its own pattern the people brought under its influence as Islam. Christianity has had to work side by side with other influences like the civilization of the Roman empire and the culture of Greece and the virtues of the barbarian invaders. But Islam shaped its peoples to its heart's content, without let or hindrance from any other

influence. And it was splendid and noble work that it did for them. It gathered the numerous isolated tribes of Arabia into one nation. It cured them of their polytheism. It raised their moral tone. It made for definite progress when it substituted a regular and lawful polygamy for the sexual laxity if not promiscuity that had prevailed before. It gave them laws of property and succession. It established absolute political and social equality among its votaries. It codified and organized public charity. The Koran commanded that the fifth part of booty taken in war should be shared by God and that it should be used for the succour of the poor, the orphan and the traveller. The faithful themselves had to pay tithe for the benefit of the poor. The alms of Ramzan were obligatory. The ideals of equality and fraternity have perhaps never been so thoroughly realized as in Islam. The unity that it gave its peoples was so absolute and thorough that its States were generally large empires, spread over a number of races and different countries. And having unified and consolidated the peoples, Islam gave them a mission in life to which they had to be faithful at the peril of their life. And that mission was to propagate the doctrine of the unity of God all over the world. Not only by conquest, but often by preaching, as Sir T. W. Arnold in his *Preaching of Islam* has taught us to believe, the Islamic peoples have gone on converting one people after another to their creed. To that mission of propaganda the Islamic peoples, the Arabs at first, the Turks afterwards, have been faithful. Wherever they have gone they have realized political unity either by their own action or by provoking a reaction among the conquered peoples.

The Arabs imposed a common yoke upon Spain, torn by the internecine quarrels of her Christian peoples, and the Christian rulers of Spain realized her unity only in the effort to expel Islam from its midst. It crystallized the wandering tribes of Tartary and Northern Africa into political unity. It started and kept them in the political course. It made them politically conscious and brought them into the main stream of

history. What Islam has done for the wild tribes of Arabia, Northern Africa and Central Asia can never be overestimated. It is not only on young peoples that Islam exercised its beneficent influence. It breathed a new life into the effete peoples of the Byzantine empire. It roused the Persians from the sleep into which they had fallen after Darius had made Persia one. It galvanized into new and expansive activity the tired and despondent peoples of Northern India and gave India the only unity on a large scale that it had known till England gathered it all under one rule. Wherever it went, Islam rendered service of a high order to civilization and progress.

This great and memorable service of Islam, however, was not without its limitations. If Islam brought progress to the peoples that came under its sway, it did not make them progressive. It made them advance, but did not endow them with the capacity for further advance. Its morality was certainly an improvement on the tribal morality which it had displaced. Polygamy was certainly better than the loose sexual relationships of the tribes before Muhamad imposed his rule of life on them. But Islam has not by itself forced Muslim peoples into the monogamy, which is the true and right relation between the sexes, although it must be acknowledged the Koran has not stood in the way of Muslims becoming monogamous. The justice and order which Islam organized were miles in advance of the private and family revenge, and the rule of might which had flourished among the tribes of Africa and Tartary. But Islamic law broke down when it was applied to the government of a large empire. Wilful murder became punishable by death, but the old system of *dia* or blood-price was still optional. It no doubt created individual property and rights of succession for women. But the State was the sole owner of land, and private proprietorship in land did not extend beyond possession.<sup>1</sup> The truth is that Islam has suffered from the disadvantages imposed by religions of the book.

<sup>1</sup> Dareste, "Le droit Mussulman," in his *Études d'histoire du droit*.



## THE MAKING OF THE STATE

### RELIGIONS OF THE BOOK

Certain religions have been formed and are governed by sacred scriptures, which are at the same time codes of law. They claim not only to govern the religions and moral life of man, but to regulate his social and private conduct. They are not content with laying down general principles of conduct applicable to all times and all persons in forms and institutions that may vary according to times and circumstances, but will prescribe even those particular forms and institutions. Law and government and social organization which must vary according to conditions and circumstances are thus made rigid and unchangeable. Law, instead of being governed by life, dares to control it. The result is death. Stagnation, decay and dissolution are the successive stages of the fate which awaits peoples whose fortunes are committed to a code of law imbedded in a book of religion. All the service that religion can render it will do for the State on one condition—that it obeys the law of its being. Religion serves as the support of society and the State only on condition that it presents its principles for their guidance and inspiration, that it does not descend into presenting particular rules of government and law. Religion must give government and law general principles and not detailed rules. The identification of religion with particular codes of law and government has been detrimental to both religion and law and government, as the history of the peoples of the book like the Hindus and the Islamic peoples has proved. Not the least among the causes of the greatness and success of the Romans was the early distinction they drew between *Fas* and *Jus*.<sup>1</sup> And one cause of the relative backwardness of Hindu law and the people that acknowledge its sway is “that the religious element in law has acquired a complete predominance, and family sacrifices are the keystone of all the law of persons and much of the law of things.”

This also has been the fate that has overtaken most of the

<sup>1</sup> Ihering, *Geist des Römischen Rechts*, Vol. I, Sect. 18.



peoples of Islam. Their original vigour and *élan* are soon exhausted and most of them are in full decadence. Those of them that are recovering now are doing so only by departing from the strait path of orthodox Islam. Even the unity which was the greatest political service of this religion was too great and too simple to last long. Islamic unity was a unity of individuals, not a unity of groups, and it did not prove immune against the forces of disintegration that gnaw at the roots of every society. Even the very fatalism of Islam, while it led the Moslems to irresistible victory, could not help them to recover once they were on the downward incline, and explains at once the rise and the fall of Mussalman peoples. But that Islam did not do everything for the peoples who came under its influence is no bar to its claim to be recognized the benefactor of a large portion of humanity, which but for it would still be in the grip of savagery.

The work which Hinduism, Buddhism, Judaism and Islam did for the State was great, but it was incomplete. Hinduism had shown how a society can endure in spite of grave defects of organization against attacks from without, if it is organized into strong communal groups hide-bound by a religious doctrine. Buddhism taught the State to look upon peace as the normal condition of human society. Judaism showed how a belief in the unity of God could help a people to political unity. Islam proved that this unity was the property of all peoples and not the privilege of one chosen race. But the unity of Islam was not an articulated knotted and architectonic unity. It was the unity of flat plains and of the desert rather than the unity of a multifeatured and varied country. It was a unity of individuals, not of institutions. Therefore it did not last long, nor while it lasted did it contribute more than a certain measure to the richness and development of social and political life. If the life and the progress of the State were to be secured against the risks of dissolution and decay, the unity and equality of Islam must be organized in the group-life of the Hindus and softened by the peace and tolerance of Buddhism.

## THE MAKING OF THE STATE

The work of combining and completing these life-giving influences was the work of another of the great religions of the world. It was the work of Christianity.

### CHRISTIANITY

From the beginning Christianity presented itself to the world as an organized separate entity. It did not like Hinduism through the Brahmins or like Islam through the Caliphate get hold of society and rule it from within. Nor like Buddhism did it turn away from the world disdaining political life and leaving it to its own devices. Christianity, on the other hand, was in the world and worked in the world, though not of it. It would form a group within a State. It would take within its jurisdiction and away from the State the whole of the life covered by religion and morality. It would not abstract citizens from the State, but would work its will upon their inner life without let or hindrance from the State. It would not try to control or govern the State, but it would have absolute freedom and independence within its sphere. With that sword-like utterance of Christ, "Render unto Caesar the things that are Caesar's, and to God the things that are God's," Christianity asserted freedom for the State as well as for the Church and made absolutism of whatever kind, monarchical, oligarchic or democratic impossible. But the life that was to be lived by the Church was to be lived, not by the favour or leave of the State. Christianity vindicated for groups, social or religious, a right to live their lives without waiting for the permission of the State. Christianity did not create the groups and the varied and rich group-life of the Middle Ages, its guilds and crafts, its orders and corporations, but it gave them the principle of life which is freedom. It was founded on the free and voluntary choice of man. And taking their cue from the Church, their prototype, the mediaeval groups formed themselves according to the initiative and choice of men. Unlike the groups of Hindu society, the groups of the Middle Ages were founded on the free choice of men. Christianity converted Caste into Class. The mediaeval groups were rooms in

a house which led from the one to the other. The serf could become a free man, the free man could become a thegn. Princes and peasants could become prelates. Trade and industry were not as free as now. But there were no castes hide-bound by heredity in the Middle Ages. Marriage between the classes was difficult, but not impossible, and did not lead to the dire consequences that it did in Hindu India. Groups were formed and re-formed in endless variety according to the needs and circumstances of the time. The life of the people was lived largely in these groups, in the family, the parish, the gild, the art or the craft. Social life was integrated and strengthened by means of them. But group-life did not stand in the way of the larger unity of society or State.

The religious unity preached by Christianity made easy the political unity of the peoples of Europe. The need for unity was preached by the Apostles and the early Fathers<sup>1</sup> even before the Church of Rome made itself the glorious defender of this note of the Christian Church. Here also, as in Islam, the belief in the unity of God led to the unity of society and State. Only the unity of the Godhead of Christianity was not the simple and stark unity of Islam. It was a grouped unity. And just as the Trinity of Christianity is being found to be a better defence of the unity of God than mere Unitarianism, so the unity organized under the instruction and influence of Christianity has lasted longer than the obvious and straight unity of Islam.

Christianity indeed is the social religion *par excellence*. "Seek ye first the kingdom of God" was Christ's commandment. Not the personal attainment of Nirvana nor an impersonal escape from the burden of rebirth nor ecstatic sacrifice for the sake of a Book, but the fellowship of creatures with the Creator. and therefore with each other linked by the bonds of love and loyalty and free service, is the *beau idéal* of Christianity. And over all this life of the unified State and the grouped society Christianity suffused a spirit of love and liberty and progress.

<sup>1</sup> See Puech, *Histoire de la littérature grecque chrétienne*, Vol. II, Bk. I.

It did not bring love as the bond of society into the world. But the "*mandatum novum*" which Christ gave the world was the love of one's neighbour whosoever it may be, and what He meant by neighbour He showed in the parable of the good Samaritan. And the love of man, as St. Augustine teaches, is a consequence of and built on the new foundation of love of God. Not the fellow-members of one's caste nor the members of one's kin or tribe or nation, but whoever has the hallmark of humanity was to be the object of the Christian's love. Patriotism under the influence of Christianity was not racial or tribal or occupational, but became local and territorial, for it made neighbours members of one another. Christianity did not bring liberty into the world, but by defending the rights of personality and limiting the authority and the sphere of the State it threw up the surest defences for the safeguarding of that liberty. It was not content with the mere assertion of the rights of personality, but fostered the building of a number of institutions which stood round man as a many-girt fortress to guard and realize his freedom. Christianity did not bring progress into the world, but it made progress secure and continuous by endowing society with the principle of life and a lively sense of reality. To the eastern discovery of the reality of the soul and of the world of the spirit, Christianity, which, like all great religions, came from the East—*ex oriente lux*—has married the western sense of the reality of matter and of the world of experience, and therefore claims to be the religion of the whole world.

Fortunately for the peoples who accepted and lived by it, Christianity did not, like religions of the Book, prescribe particular rules of conduct in regard to their legal, political and social life. Its Founder, who realized the divine in flesh and blood, was content with bequeathing to His people the priceless gift of His personal example and laying down general principles of private and social conduct, and left it to succeeding generations to frame the particular rules and build the particular institutions that may be required from time to time by needs and

circumstances. Christianity, says Lord Acton, introduced no new forms of government, but a new spirit which totally transformed the old ones. That is why age cannot wither nor custom stale the social value of Christianity. And that is how Christianity has contributed to the progressiveness of her peoples. Not only has it endowed them with the vigour of life, but it has impregnated them with the saving principle of recovery such as social life had not known before. Christianity has armed peoples as well as individuals with the power to rise after a fall. Whereas before Christianity great States or societies, once they were struck by the blight of decay, never rose again, Christian States like Spain, the South American republics, the Balkan States, have emerged into the light of the sun after a short or long eclipse. And non-Christian peoples, incited and encouraged by their example, have attempted to mend their broken fortunes time after time. Neither Fate as among the Muslims, nor Karma as among the Hindus, nor Nemesis as among the Greeks, has any paralysing terrors for peoples of the Christian era. This principle and power of recovery is one of the greatest contributions made to the progress and prosperity of the State by Christianity. This and the superior work it did for the unity of the State by founding it on the free life of groups and institutions and for liberty by building it on the rights of personality are the greatest political services rendered by Christianity to the world. Not much need be said of the work it did in the civilizing of society, the refinement of manners and the improvement of morals, although the work done by it in this regard was superior in degree and sometimes in kind as in the work it did for women to that of other religions. For it is a well-known tale, and it was of the kind done by other religions like Buddhism and Islam. Moreover, the civilizing work of Christianity it shared with other influences like Roman civilization and Greek culture and German customs, and it did not operate so isolated as Hinduism, Buddhism or Islam, which worked their will upon primitive and savage tribes.

Nor is it necessary to refer here in detail to the influence of the different divisions of Christianity upon society. Something was said about this in an earlier chapter. We are concerned here with only the sociological value of religion, not with its doctrinal truth. From that standpoint we would be warranted in saying that the full social influence of Christianity is realized in historical Christianity which is Catholicism. Without denying all that Protestantism has done for the individual and individualism, especially what the Puritan sects have done for parliamentary liberty and constitutional government and for the rights of individuals against the claims of society and the State, we are justified in contending that Catholicism, without crushing under its feet the rights of personality, has always strengthened those ideas and institutions that contribute to social solidarity. The rigid discipline, the powerful organization and the remarkable integration of Catholicism render it sociologically superior to other forms of Christianity. If, as Bacon urges, "religion being the chief bond of human society, it is a happy thing when itself is well contained within the true bond of unity," Catholicism, with its peremptory insistence on unity, has always been a unifying force for its peoples. It is, according to a non-Christian sociologist,<sup>1</sup> the sure defence of the modern world against those anti-social tendencies of our times—divorce and suicide. It takes the State under its protection against the attacks of individualistic as well as of socialistic ideas. Catholicism preserves the rights of the individual without suppressing the claims of society. And possessing as it does that mystery or *rahasyam*, which is the core of all great religions, it became a Faith that can move mountains, and not a mere philosophy or ethical endeavour. It is the capacity of Catholicism at once to safeguard social interest and to minister to individual want that explains its persistence through the centuries, in spite of so many faults within and of such violent opposition without.

<sup>1</sup> Chatterton-Hill, *Heredity and Selection in Sociology*.



## RELIGION THE CEMENT OF SOCIETY

However that may be, and whatever our view may be of the manner or extent to which the social influence of this or that religion is exerted, there can be no doubt that religion is one of the most potent factors in the making of the State. This survey of the influence of the most important religions of the world upon their societies shows that religion affects States and societies, not only in the origin and infancy, but at every stage of their existence. Sir J. G. Frazer has sufficient reason for the view that "religions have transformed nations and altered the face of the globe." It was a strange thing to Montesquieu, but it is nevertheless true, that religion which seems to be made to give men happiness in another world is, however, the institution which assures him happiness in this world. No society, however civilized it may be, no State, however well organized it is, can do without religion. "The kingdom of God," said Richelieu,<sup>1</sup> "is the principle of the government of a State." Society is kept together by a balance between the forces of integration and the forces of disintegration, which incessantly press against each other for mastery. The egoism of the individual keeps his social instinct engaged in constant and continuous battle. Religion is the most potent among the forces that keeps down the anti-social egoism and the disintegrating individualism that, if left free scope, would bring society down crashing about our ears. These forces of disintegration are never asleep. They are more alive now than ever before in the history of the world. Modern political philosophy, the French Revolution and material prosperity have given the individual a good conceit of himself. Selfishness is the note of modern civilized life. It permeates all classes of society. It has attacked the poor as well as the rich. The socialistic challenge is only a demand that the good things enjoyed by the rich should be possessed by the poor. The material prosperity of the individual and not the welfare of society is the leading idea of most modern political and economic movements. Self dominates society instead of

<sup>1</sup> Richelieu, *Testament Politique*.



being subordinate to it. There is more talk of rights than of duties. This glorification of the individual will lead to a civilized form of anarchy if it is not limited and controlled. And the only force that can, according to the teaching of history and individual experience, put the individual in his place is religion.

It is religion that teaches man that he is not the centre of things, that he is not a law unto himself, but that he is subject to higher powers. Religion is the support of individual liberty. There is a Hebrew proverb which says that a man who has not God for his master is the slave of many masters. It is not the great religions of history that are the enemies of society, but the petty cults of fashionable philosophical cliques, like the oriental worships that found their way into the Roman empire, and which in the opinion of Sir James Frazer tended to withdraw the devotee more and more from the public service, to concentrate his thoughts on his own speculative emotions and to breed in him a contempt for the present life, which he regarded merely as a probation for a better and an eternal, and thus brought about a general disintegration of the body-politic when the ties of the State and the family were loosened and the structure of society tended to resolve itself into its individual elements, as illustrated in the last days of the Roman Empire. Organized religion makes him feel every moment of his life that he belongs to others than himself, and forces him to subordinate his will to the authority of conscience, principles and institutions. It teaches him that he belongs to society and must therefore bridle and rein his selfishness. It makes him realize that sacrifice, and not selfishness, is the law of social life. Religion raises man above himself and above selfishness and thus saves society from anarchy and leads it to freedom and progress. In the solitudes of Africa, H. M. Stanley<sup>1</sup> learnt that only with the support of religion can man make any individual or social progress.

#### THE ALTERNATIVE—MORALITY

Mere morality will not do it. Modern philosophic statesmen

<sup>1</sup> Autobiography, ch. XXVIII.

like the late Lord Morley, bewildered and disgusted with the confusion of contradictory religions, have turned to morality as the teacher of the modern State. And in France they are trying to build the civic education of youth upon a moral code. But morality can be as multiform as religion. And the best laid moral system is after all the work of an individual or of a nation. And the lever to turn the character of men is inside not outside a man or a community. As F. W. Förster says, it is a heavy illusion to build a code of political duty upon an enlightened social morality. The modern individual with his abnormal egoism and self-centred will can never be curbed except by a power that is above and outside him. Mere secular education, as the Prussian schoolmaster Sulzer believed, cannot do it, for it does not know as Frederick II did "*diese verdamnte Rasse*." The modern State with its powerful organization and will to wealth and power can never be moralized and civilized except by a power that can dictate to it from outside. Only One who could say "My kingdom is not of this world" can exercise any moral jurisdiction over the State. No State can indeed do without morality. The moral law must preside over the government of States as of individuals. "Thou shalt obey God rather than man" is the supreme commandment for governments as for individuals. What is morally false, as Gladstone said, can never be politically true. Machiavellianism is not only bad morals, it is bad politics. For the political unity, power, and prosperity that successful Machiavellianism may produce is mechanically produced and can be of only temporary duration. The divorce between Morals and Politics, that Machiavellianism requires, produces, as Förster points out, such a laming of the soul, such a division in the mind, and such a weakening of the will of the individual, that the lasting progress and prosperity of the State cannot be ensured. Machiavelli is not a good goer, nor does he win on a long course. The moral law, it is true, subdues the egoism of man, his anti-social instincts, the centrifugal tendencies of the individual, and teaches the social virtues of obedience, piety, loyalty and respon-

sibility. Anarchy in the soul, says Förster,<sup>1</sup> leads to anarchy in the State. But the moral law without the support of religion would be a paper constitution. It would be bereft of that high incentive and hourly and nervous courage, which is necessary that morality may fertilize in action, and which only religion can give. For want of a better force, morality may do. But it is in religion that morality is realized and becomes perfect.

Religion is the most powerful sanction of morality. What a recent writer on ancient Egyptian history says of its last phase is applicable to all ages of the decline of religion: "Deprived of their familiar gods and unable to comprehend the new god who was offered to them as a substitute and whom they hated as the cause of all their disasters, the people lost all sense of sanctions of religion for their moral code, and the result was a general dissolution of law and order."<sup>2</sup> All the wise laws of Horemhib against bribery and corruption and the flash of Rameses II's reign could not save the ancient Egyptian State from dissolution. Nor need the modern circumstance of diversity of religion unnerve us as it did Lord Morley. Religious unity is not necessary for the modern State, which has found other supports of its unity. But what the modern State does require is the education in social solidarity and strength, which the great religions of the world in varying measure can give their peoples.

#### CHURCH AND STATE

Religion has been the strongest buttress of the State in all ages and in all places. It therefore behoves Society and the State to safeguard the position of their defender and guardian. The free life, the liberty, and the autonomy of religion and its organization must be guaranteed by the State. Provided its institutions and activity are not directed against the life of the State, its independence must be protected, for only in independence can it render real service to the State. A State Church

<sup>1</sup> F. W. Förster, *Politische Ethik und Politische Paedagogik*.

<sup>2</sup> Baikie, *The Amarna Age*.

## RELIGION AND THE MAKING OF THE STATE

in the sense of a Church subordinate to the State is not a Church in the true sense of the term. Religion and religious organizations have so often to set States and societies aright that they cannot form part of it. "Not a free Church in a free State," as was Cavour's formula, but "a free Church by the side of a free State," is the formula that expresses the right relations that ought to exist between religion and the State. The State must therefore be specially careful not to act against religion except in self-defence or to correct abuses. States attack religion, not only to the detriment of the conscience of the individual who professes it, but at peril to themselves, for they undermine the very foundations of their existence and weaken the arm of that which keeps in check the tendencies of the individual that are as much the enemies of the State as of religion. Anti-religious laws are really anti-social laws. Especially in our day is the support of religion necessary for the life of the State. Napoleon called in the aid of religion to make Frenchmen submit to the yoke of his imperial rule, to support the inequality of fortune that must exist in society and as a tolerable alternative to Cagliostro, Mdlle Lenormand and the Kants and dreamers of Germany. He looked upon religion as a narcotic that would make men forget their misfortunes and submit to government. But religion is as necessary for democracy as for monarchical despotism. For the rule of numbers would become a terrible tyranny if the citizens of Democracy were not restrained and refined by religion. If will were the only sanction of government, a million wills supported by the weapons of modern agitation and organization can make mish-mash of the strongest government and lay the most powerful State in ruins. But if these wills are controlled by religion and its true helpers, conscience and morality, then they may succeed in realizing the aims of the State on the grandest scale and on the largest canvas known to history. Religion is not only a friend and ally of democracy, but its very teacher. Of all kinds of States and governments, religion is the surest shield and the soundest support.

## IV

### CUSTOM AND LAW

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“ἡ γὰρ τάξις νόμος—Order is Law.”  
ARISTOTLE.

#### LAW, NATURAL AND NECESSARY

When men begin to live in society, the first thing they do is to get themselves a set of rules and regulations which will govern their relationship to each other. As soon as two or three men settle together in a new country which has no organization of its own, as when the English or French colonists settled in North America, one of the first things they have to think of is how to regulate their conduct towards one another and how to settle quarrels with each other. For not all the contacts of man with his fellow men, whose society he may love and into which he may even be driven by his instincts, are peaceful. In spite of the best will and the best intentions, disputes are bound to arise. One man's view of what is due to him or what he owes to another may not be another man's. Partners in business have often quarrelled about the distribution of profits. And this not from the mere original sin of man, but from the inherent difficulty of all social co-existence. Men, therefore, if they are to live in society and at peace with each other, must make themselves rules and regulations by which they agree to govern their intercourse with one another. This statement must not be taken to have a Rousseauistic meaning, as if the first men who were driven by this need for one another to live in society sat down before doing so to make themselves a code of laws. That is not how the thing happened.

#### CUSTOM

Men in the very act of living with each other formed this or that rule, which in fact was suggested to them by this or that

fact of relationship, and agreed to take it as binding on them on all similar occasions and in regard to all similar facts that may occur in the future. For instance, an agreement to do a certain thing or refrain from doing another is found by experience to be kept better if a certain formula of words or ritual is used and the archaism of ancient forms of contract is thus accounted for. The use of the *aes et libra* and *libripens* and the formula of *mancipation* formed in ancient Rome the elaborate ritual for the transfer of goods. Thus also the custom of pouring out water in the process of transferring property like land in ancient India gave picturesque formality to the business of buying and selling.<sup>1</sup> Or, again, if a theft or murder was committed, it was found that it was easier to get at the thief or murderer if the people of the locality were asked to say what they knew about it, than if an official from outside came to investigate it. It must have been thus that the process of compurgation among the German tribes was set up. It is from actual, albeit limited and insufficient experience, that the archaic customs of private revenge, slavery, adoption, barter, the blood-feud, distress for debt, among primitive communities in general and the punishment of *talio* for *membrum ruptum*, the *addictio* for *furtum manifestum* among the ancient Romans in particular came into force.

#### ORIGIN OF CUSTOM

Custom, namely, that which has been used and found useful for the time being, was what governed the actions of primitive men towards each other. In the history of social life, Custom, therefore, was early Law. It was the law of primitive society. The ancestors of modern peoples and the savage tribes of the present day are governed by it. The whole of the law of Melanesia and of the tribes of Polynesia is customary law. It arose, as we pointed out, almost unconsciously and instinctively. As Maine has reminded us, the council of village elders in India, for instance, does not command anything; it merely

<sup>1</sup> Barnett, *Antiquities of India*, ch. "Law and Government."

declares what has always been,<sup>1</sup> the antiquity of a custom or usage being by itself assumed to be a sufficient reason for observing it. Like the Brahmins of ancient India, the Brehons of Celtic Ireland only declared existing usage to be the law. Custom arose, as Vollgraff<sup>2</sup> puts it expressively, as price arises from supply and demand in the actual process of buying and selling. It arose out of the facts of social intercourse. It was beaten in the process of social life. Time, therefore, is of the essence of Custom. It is the daughter of time. Like good wine, the strength and worth of Custom are bred with time.

This rule in regard to Custom is accepted even by modern Courts of Law. As the High Court of Madras held in *Perumal Sethurayar v. Muttu Ramalinga Sethurayar*,<sup>3</sup> "What the law requires before an alleged custom can receive the recognition of the Court and so acquire legal force is satisfactory proof of usage so long and invariable that it has, by common consent, been submitted to as the established governing rule of the particular family, class, or district or country." A series of similar acts are consequently necessary to make a custom. As Maine<sup>4</sup> insists, a custom to be valid must have been in practice and not merely a tradition. New facts of life, as a new trade, a new occupation, a new institution, like feudalism, or the substitution of money for barter, breed new customs. The facts of trade must exist before customary law about trade is brought into being. This is how the Law Merchant arose in England and came to be recognized as part of the Common Law. Lord Mansfield only helped to settle the law as it was made by the customs of merchants. As the words of the judgment in *Goodwin v. Roberts* (1875) put it,<sup>5</sup> "The law merchant was no more nor less than the usages of merchants and traders, ratified by the decisions of courts of law, which upon such usages being proved before them have adopted them as settled

<sup>1</sup> Maine, *Village Communities*, Lecture III.

<sup>2</sup> *Polignosie und Polilogie*.

<sup>3</sup> 3 M.H.C., 75.

<sup>4</sup> *Village Communities*, Lecture II.

<sup>5</sup> Quoted in Vinogradoff, *Common Sense in Law*.



law." The negotiability of bills of exchange, the sale in market ouvert and other commercial laws of the Middle Ages were customs enforced by the public opinion of merchants before they were recognized and enforced by the courts of law. Similarly the Oleron code of sea laws, the basis of the maritime law of England, had been in use among mariners on the west coast of France before they were confirmed by the Roll of 12 Edward III.<sup>1</sup>

#### POPULAR ORIGIN

The origin of Custom was therefore popular and not personal. It was not the judgment of a single man, chief, or judge or priest. It was the common usage of a people. Custom is not, as Maine thought in *Ancient Law*, a codified collection of Themistes or judgments uttered by judges on cases brought before them. His later opinion found in *Early Law and Custom* is truer to the facts of primitive social life, when he says that "these ancient Themistes or Dooms are doubtless drawn from pre-existing custom or usage." Thus the Torah of the Jews were just the customs of the people upon which the judges and priests based their judgments before they came to be applied to law in general and afterwards to the written law of Pentateuch.<sup>2</sup> Custom, therefore, arose from among the people. It was not even imposed by a majority upon a minority. For, as Vollgraff points out, the will of a majority can prevail only when it is backed by the power of a developed State, and the primitive State had not the power to enforce the will of a majority upon a minority. Custom, therefore, was accepted unanimously by people, but not by formal motion put or vote taken. It was simply and quietly accepted by all because it arose out of the common life of all.

Custom, therefore, would arise only among a people who were one in language, habits and life. While the later Law could be imposed by the will of a despot on a collection of

<sup>1</sup> Sadler, *Relation of Custom to Law*.

<sup>2</sup> Frazer, *Folk-lore in the Old Testament*, Vol. I.

different peoples, Custom could arise only out of the common life of a people who could live in common. The popular origin of Custom is proved by the fact that its rules are found embedded in national poems, folk-songs, proverbs and popular sayings. Grimm reared his fabric of ancient German law on a study of the linguistic antiquities of the German people. Indian Courts of Law even to-day take Custom as they find it prevailing among the castes of the suitors that come before them. And in doing so they are following the injunction of the Code of Manu, which enjoined upon the ancient king who knows the sacred laws that "he must inquire into the laws of castes of districts, of gilds and of families and thus settle the peculiar law of each."<sup>1</sup> They did what the early German Schöffen and the French Rachimburgi did—that is *das Recht finden, das Recht wissen*, i.e. to find the law, not make it. Custom, therefore, is born, not made. What Cicero said of Lex can only be attributed to Custom. "Non scripta sed nota est, ad quam non ducti sed facti, non instituti sed imbuti sumus."

Custom is therefore peculiar and particular to a single people, while Law may be universal. It must in its very nature differ from tribe to tribe and from people to people. Arising out of the habits, modes of life, and beliefs of a people, it is therefore that people's peculiar product. Custom is not meant for export, but for internal consumption. Custom is the distinguishing mark and note of a people. It gives a people its *cachet*. It gives its people a twist from which it will find it hard to escape. Men love their customs, not because they are good, but because they are fed and grown on them, because the bones and limbs of their social life have been made by them and out of them. Cicero's definition<sup>2</sup> of Custom sums up these characteristics when he says "consuetudinis jus esse putatur id quod voluntate omnium sine lege vetustas comprobavit." Only by *vetustas* must be meant long usage, and

<sup>1</sup> *Laws of Manu*, ch. VIII, 41, Bühler's edition in Sacred Books of the East Series.

<sup>2</sup> Quoted in Vollgraff, *Polignosie und Polilogie*.

not antiquity. For Custom is not made once and remains so ever afterwards. It grows, develops and changes according to changing conditions and circumstances. The popular and instinctive origin of Custom is better summed up by Ulpian, who defines it as "tacitus consensus populi longa consuetudine inveteratus."

It would be a mistake, however, to imagine that the process by which Custom came to rule primitive society was altogether easy or unconscious, a mechanical manifestation of a Volksgeist. As Ihering<sup>1</sup> points out, a *Kampf ums Recht* was waged in primitive as in historical times, and the rules and regulations of Custom were the result of a successful struggle against certain social instincts and tendencies. And Treitschke's view<sup>2</sup> that "what to later generations appears as the simple work of a general unquestioned popular will is in truth born out of the hard struggle of strong and resolute men," may be well founded. Brahmin priests, Roman pontiffs and Irish Brehons, aided by the secular power of kings and tribal chiefs, were the guardians and oracles of the customs of their respective peoples. Maine has shown how before the invention of writing, and during the infancy of the art, an aristocracy invested with judicial privileges formed the only expedient by which accurate preservation of the customs of the race could at all be ensured. Custom, though it arises out of the life of the people and sanctioned by popular assent, was after all made and preserved by men.

#### FORCE OF ANCIENT CUSTOM

Although in origin and characteristics Custom differs from later Law, it has all the force of Law. Although it is not written or embodied in a code or decreed by a lawgiver or a legislature, it is as much obeyed and respected as Law comes to be. In some communities, the hold of Custom has been even more pressing than that of Law on modern communities.

<sup>1</sup> Ihering, *Geist des Römischen Rechts*, Vol. II, Sect. 25.

<sup>2</sup> Quoted in Ihering, Vol. II, Sect. 25, footnote 14a.

Even Aristotle,<sup>1</sup> speaking of the Greeks, recorded that the people do not easily change, but love their own ancient customs; and while the Law may impose one system of government, Custom may favour another. Narada the Hindu law-giver goes so far as to say "Custom is powerful and overrules the sacred law." Ihering<sup>2</sup> enumerates four points in which ancient Custom is superior to modern Law—its oneness with life, for it is not imposed, but immanent in the people it governs; its oneness with time, for it does not stand behind its time as Law does; its oneness with the subject, for the persons subject to it are instinctively conscious of it; and finally, the harmony of rule with rule for the rules of Custom, unlike those of Law, form one single integral body eliminating all contradictions and confusion.

Thanks to the strength which Custom acquired from these advantages it was able to do for ancient society and State work that contributed to the preservation of ancient society and State. For it was Custom that regulated the relations of the members of primitive society with one another. It consisted of rules and directions governing the relations of man with the other members of the different groups to which he belonged like the family, the clan, the tribe or later the State. Custom helped man to conquer the selfish egoism of the individual. Custom was not only the expression of the circumstances of ancient social life, but also of the morality of primitive peoples. The relations of man and wife, of father and children, the relationships involved in earning and holding that which man acquires by the sweat of his brow, land or cattle, or wood, the relations involved in the act of buying and selling, in fact the whole private and public life of a man as a member of society was governed by Custom. And the observance of these rules was imposed by authorities similar to those that are now the custodians of Law and was enforced by more or less the same sanction, that is by punishment. It is true the sanctions

<sup>1</sup> *Politics*, Bk. IV, ch. 5.

<sup>2</sup> Ihering, *Geist des Römischen Rechts*, Vol. II, Sect. 25.

were not the same as those of later Law under a strong centralized government. The Brahmin of ancient India, for instance, would declare that neglect or disobedience of the customary Law incorporated by him would be followed by endless degradation and torment, and the Brehons of Celtic Ireland would assert that the unlearned brother who pronounced a false judgment would find blotches on his cheeks, and that the chief who allowed revered usage to be departed from would bring bad weather on his country.<sup>1</sup> Custom differs from Law in regard to form and origin, and not in regard to content or authority or sanction. The analytical jurists of Austin's school who, in the light of their theory, could not understand the authority of Custom, were driven to the absurd argument of Austin, "Whatever the sovereign permits, are commands of the sovereign," as if command could be asserted of ancient society, or as if Ranjit Singh of the Punjab could do anything but, in most matters of social and private life, permit the customs of the people to have their way.

#### RULES OF ANCIENT CUSTOM

Although ancient Custom resembles later Law in regard to its content, this does not mean that it dealt with the same kind of matters as Law did later or does now. Custom, as we have pointed out already, answers to the needs and arises out of the life of ancient society, and Custom does not, like so much of modern Law, owe any of its rules or maxims to theory or abstract principles. It is closely bound with the life out of which it grows and for which it is intended. It therefore has only just those rules and regulations that are required by the conditions and circumstances of the society and life whose guide and ruler it is. If we examine the customary law of the peoples of history, we shall find that they are concerned only with those incidents of their life which seemed most important to them.

First among these incidents were those connected with the

<sup>1</sup> Maine, *Early Institutions*, Lecture I.

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most important institution of ancient society, that is the family. The chief events of family life, marriage, death, succession and inheritance, the relations between husband and wife, parents and children, form the bulk of ancient customary law.

Among the Arab tribes before Islam the custom of polygamy had existed and the Koran only regulated it. The custom of the Levirate among the Jews was not prescribed by Moses, nor the corresponding Hindu practice of Niyoga traceable to any lawgivers. The custom of the marriage of brothers with sisters to which the Pharaohs of Egypt were addicted was a custom and was not imposed by any law. Among the Ainos of Japan brothers married sisters, and fathers married daughters.<sup>1</sup> The custom of polyandry prevailed among the Nairs of Malabar and still prevails among some Tibetan tribes. The custom of endogamous marriages prevails among the Gipsy tribes, the Karens of Burma and the natives of Madagascar, while that of exogamy prevails among the pre-Islamic Arabs, the Brahmins of India, the Garos of Assam, the Veddahs of Ceylon, the ancient Chinese, the Samoedes and the Ostiaks of Central Asia, the Blackfoot and Crow Indians of North America.<sup>2</sup> Various other forms of marriage, like group marriage, marriage by rape, such as the rape of the Sabines, marriage by sale, were also allowed by primitive Custom.<sup>3</sup>

None of these forms or kinds of marriages was prescribed by written law, but, although they were embodied and codified later on, they were really the usages of the people among whom they prevailed. Blood-kinship kept the primitive family together, and the custom of blood-revenge sometimes compromised by a blood-price, as among the ancient Persians<sup>4</sup> and modern Pathans, Bedouins and Maoris, preserved the primitive family against attacks from without and attacks from within. The punishment of one's kinsmen for one's crime was a widely prevalent custom, for it has been observed among peoples

<sup>1</sup> Post, *Bausteine für eine allgemeine Rechtswissenschaft*, Vol. I, Sect. 89.

<sup>2</sup> Lowie, *Primitive Society*, ch. VI.

<sup>3</sup> Post, *Über die Aufgaben einer allgemeinen Rechtswissenschaft*.

<sup>4</sup> Ibid.

as distant from each other as the Chinese and the natives of Madagascar, whose wives and children were punished for the offences of the head of the family. The custom of the unlimited authority of the father *usque ad mortem* over his children existed among the Gipsies, the ancient Chinese, the Kelts of Ireland, as well as among the ancient Romans. Similarly, succession and inheritance of property were determined by Custom. Not the will of the individual, but the Custom of the people determined whether the eldest son should inherit as in primogeniture, which prevailed among the Basques, or the youngest, as in Borough English, which is not so English, after all, for it is found among the Badagas on the Nilgiris, the Nagas of Manipur, certain nomadic tribes of Central Asia, as the Kirghiz and the Yukagirs,<sup>1</sup> as well as in Brittany, Upper Alsace, Brabant and Montenegro.<sup>2</sup> Women were generally excluded from inheritance, even if the descent were traced through the mother, as among the Mikronesians, for ancient society judged not according to the intrinsic worth of women, but according to her social value. But ancient Hindu society allowed women to possess a *stridhana*, which English women did not acquire till the Married Women's Property Acts of the nineteenth century were passed. And Maine's surprise at these extensive rights of women to property might have been modified if he had remembered that women's rights, which are older than her dependence, are the mark of primitive society. Wills are generally the product of a later age, and family property, according to ancient custom among the Gipsy tribes and the Mikronesians, descended as a whole to the head of the family or was divided up in varying proportions among the people. The joint family system began as a custom in Hindu India.

All these rules that governed ancient family life were the offspring of Custom. So also were those of social relationships. When the sense of individual property first awakens among a

<sup>1</sup> Lowie, *Primitive Society*, ch. IX.

<sup>2</sup> Post, *Bausteine für eine allgemeine Rechtswissenschaft*, Vol. II, Sect. 134.



people, stealing is considered to be one of the most heinous crimes. Among the ancient Persians it was punished with death. A penal code was first inaugurated among the Baluchi to punish stealing. Contracts marked the beginning of commerce, and to secure the foundations of commercial life, which are trust and credit, breaches of contract were at first punished as crimes as among the ancient Persians and not as civil offence as among us. The crimes that Custom condemns and punishes are those that threaten most the existence of primitive peoples. In the kingdom of the Incas, crimes against religion were visited with the severest punishments.<sup>1</sup> Among the Fijians, theft, adultery, rape, the unauthorized use of magic, arson, as well as want of respect towards great personages, were considered to be worthy of punishment, for they were directed against the institutions necessary for social life, namely, the family, property and authority. In ancient China impiety towards elders of the family, lack of loyalty in office, want of pity and fellow-feeling were punished by criminal law.<sup>2</sup> Crimes against property, according to ancient Custom, were more often punishable than crimes against life. Theft and adultery are indictable offences among the Kaffirs of Africa, while murder will produce little or no sensation among them, being left to the tender mercies of individual or private revenge. The foundation of social life is peaceful intercourse, and the custom of family and kin revenge is certainly an improvement on that of private revenge. But among certain primitive peoples individual life was considered so precious for the existence of society that even accidental killing was punished as a crime among the ancient Chinese and Japanese. Crimes are more anti-social than civil offences, although in the history of law, crimes, for want of public force and authority, were treated as civil offences, i.e. as torts, in fact.

The history of early procedure throws a light of interest on

<sup>1</sup> Post, *Bausteine*, Vol. I, Sect. 69.

<sup>2</sup> Op. cit. But Post also gives numerous instances of anti-social habits condoned by primitive peoples.

the social thought of ancient peoples. The detection of crime by means of evidence and the examination of witnesses was too laborious a process for primitive society. Moreover, modern means of detecting offences in the form of an organized police were not at hand. So primitive peoples left the discovery of the truth in a case of dispute to other-worldly powers. It was not by Law but by Custom that the various kinds of ordeal came to form an important part of early procedure. Ordeal by fire existed among the ancient Persians, the Mongols, most of the Malay tribes, as among the ancestors of most of the Indo-Aryan peoples of Europe and Asia. The ordeal by poison was practised by the natives of Madagascar. Primitive procedure in the absence of sufficient public force allowed the parties to a dispute to get satisfaction themselves, to take the law into their own hands, so to speak. The Roman actions of *pignoris capio*, the *manus injectio* are such examples of primitive procedure. Similarly the action of ancient distress, of which Hindu India offers a peculiar example in the practice of "sitting dharna" shows how primitive procedure was a private business. Family oaths in support of a charge or as a defence are allowed among many of the Malay tribes, and compurgation existed among most of the Indo-Aryan peoples.

Punishment also bore the mark of the life of ancient society. To punish a criminal, you had to catch him first, and that was easier said than done in primitive times. Composition for crime was therefore common among primitive peoples as among the Mongols, the Malay tribes, the Maoris, the Afghans, and the Melanesians, while the principle of blood for blood was practised by the family and the kin of the murdered man. The execution of a sentence was much more difficult than obtaining it in a primitive society. It was often left to the individual to get the courts' decrees executed. The interesting Hindu custom of "sitting dharna," according to which a creditor would not leave the doors of his debtor and would starve himself into making the latter pay, is not peculiar to the Hindus, but existed

among the ancient Persians, the Kelts of Ireland, and according to Post<sup>1</sup> is found as far apart as Korea and the Gold Coast.

## SERVICES OF CUSTOM

These facts taken from the life of the ancestors of modern peoples and contemporary savages show how Custom arose out of the needs and circumstances of these peoples. It was born and grew because it was suited to and needed by ancient society. Thanks to it, social life was strengthened and integrated. Thanks to Custom, social intercourse took to the ways of peace and political life in the State and political development were ensured. It bound primitive men and groups to each other. Custom has often served the cause of progress. The rigid *patria potestas* of the Romans was modified by the custom of *peculium* and *peculium castrense*. It was Custom with the aid of religion that taught primitive men the ways of obedience and subjected him to the yoke of authority. It put restraint on the power of might and enabled the weak and the strong to share in the advantages of social life. It gave ordered government to primitive society. Religion by itself could not have done it. In fact in ancient Rome Ihering<sup>2</sup> has shown that the influence of religion upon State and society came only much later than that of customary law. We have already paid our tribute to the work of religion in the making of ancient society. But religion could act only as an influence or as an idea operating on the mind and attitude of man towards his fellow men. It could prepare and train him for society. It could not make him a society. It could set him an example of organization, but it could not build him a social institution. It gave him ideas which he tried to realize in his institutions, but it could only guide and inspire, warn and restrain him in his progress through social life. It could not in those primitive times get hold of his social life and form it after its own image,

\* *Die Anfänge des Staats und Rechtsleben*, p. 270, and *Bausteine für eine allgemeine Rechtswissenschaft*, p. 244.

<sup>2</sup> *Geist des Römischen Rechts*, Vol. I, Sect. 8.

building institutions for it and imposing its law as the only law upon it. This Custom could do and did it. Customary law according to Ihering did the work of the State for primitive Rome long before the Roman State came into being.<sup>1</sup>

#### CUSTOM RATHER THAN LAW IN PRIMITIVE SOCIETY

Nor could Law have done it. Law in the Austinian sense of a command imposed from above by a person or body of persons habitually obeyed was out of the question among primitive tribes. In the first place there was no authority to make the law still less an authority strong enough to force people into obeying that law. Law comes into existence only with written literature, for Law is written, while Custom is unwritten, and with a strong central government and with a fully developed State. Law even in the sense of rules and orders declared by an authoritative body of men like judges could have had no effect upon ancient society, for in the absence of an executive able to enforce those rules and orders they would have no effect. Only those rules and regulations would have bound primitive society which primitive society knew arose out of itself, its needs and its activities. The only restraint of rules and regulations that could have stood the test of the facts of primitive society was that which was accepted by the people, because it had grown up with them and had been handed down from their ancestors and had become part of their every-day lives. This restraint which primitive men accepted was what their past and present, the conditions and needs of their life, and not any personal authority, had imposed upon them. And the sanctions of Custom were effective enough like ostracism and outcasting, which still operate with great force in caste-ruled Hindu society. The bond which held primitive society together was a rule which primitive society wove from within itself in the manner of the silkworm, and not one which stood above them and which tried to govern them by hands that did not belong to the people.

<sup>1</sup> *Geist des Römischen Rechts*, Vol. I, Sect. 8.

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### DISAPPEARANCE OF CUSTOM

The excellence and secular services of a human institution or idea are no guarantee of its permanence. Most human things have a relative and temporary value. Custom, which did so much for primitive society, which taught it how to walk and which fostered and nursed and held human society up as it pattered and tottered up the path of progress, was found after a time to be a clog and a fetter. There came a time when, far from being useful to society, it was a bane and a bar. When an idea or an institution has exhausted all its possibility of good, it has lost its right to exist, and people ask why it cumpers the ground. And the more effectively and thoroughly the idea or the institution does its work, the more need there is for its disappearance for the health of man and society. It was so with Custom. It could not be everlasting, for the form and organization and ideas of the society for which it grew and for which it was intended came to be different as time went on. Its permanence depended on the constitution and ideals of society remaining the same. When society changed its form, its structure and its aims, Custom had to bow itself off the stage. Custom was meant to regulate the life of a simple homogeneous society, whose members spoke the same language, had the same habits of life and were bound together by the ties of kinship. As Maine teaches us, Custom flourishes only in small homogeneous compartmental societies like the Indian occupational caste or gild and disappears from a widening and expanding social organization. Incidentally, it may be said that hopes for the disappearance of Caste in India lie in the formation of large occupational groups like Trade Unions, which ought not to be restricted to certain industries, but ought to include rural agricultural communities. Custom was meant for a society whose law was morality. The German word *Sitte* is allied to *Sittlichkeit*, as the Latin *Mores* stood for customs and morals, as the Sanskrit *Dharma* did duty for customary law and morality.

## CUSTOM OUT OF DATE

Custom was meant to be the restraint and bond of a society which did not possess the unifying and coercive authority of a State. But when society ceased to be composed of a single people and came more and more to be the beaten amalgam of a number of different peoples, when men of different habits of life divided up into classes or castes or groups were brought under a common political authority, some other stronger and more external bond of union was required than Custom. When for the holding together of different peoples and classes and groups in a State, the strong central government of a State was required, natural custom had to give way to artificially created rules. Custom was all very well for a divided, local, tribal society. Custom finds a people divided and keeps them so. *Sonderrecht*, as the Germans call their ancient customary law, does indeed sunder people. What Voltaire said of French law of his time may be said of any Custom-ridden country: One changed one's system of jurisprudence each time one changed one's omnibus. And when the State began to expand in size and grew more and more complex in its organization and increased the number and worth of its aims, it did not receive much help from Custom. Small, simple, instinct-governed and want-bereft societies could jog on with Custom, but the large expanding complex State of civilization required something more conscious, more thought-laden, more rational, something more active and constructive than Custom. The characteristics which Ihering<sup>1</sup> attributes to Custom, its indefiniteness, its uncertainty, its very fluidity, could not serve the purpose of an expanding, free and progressive people. It is only stationary and unprogressive societies that hug Custom to their bosoms and will not let it go. The Greeks looked upon Custom (*Nomima*) as the badge of barbarians, while Law (*Nomos*) was the proof of civilization. Custom is good enough for Society; it is not good enough for the State. What the State required was

<sup>1</sup> Ihering, *Geist des Römischen Rechts*, Vol. II, Sect. 25.

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something that had in it its own seed of expansion and growth. If the State was to come into being and prosper, Custom had to yield its place to a more active successor. And that successor was Law.

### PASSAGE FROM CUSTOM TO LAW

The passage of a people from the reign of Custom to the rule of Law is one of the most important periods in its history. But it is only of a very few people that we possess records of this interesting stage in their political evolution. And even these records are too scanty to enable us to know as much about it as we would desire. Historical transitions produce gaps in historical knowledge. It would seem as if people were so absorbed in the act of changing carriages that they had no time to write about it, and once they have changed, the new country was too engrossing to let them think how they got there. It is only from stray hints in the records of later times and vague traditions that we may reconstruct for ourselves an account of the manner in which Custom was changed into Law.

### MODES OF TRANSFORMATION

Ancient legend attributes the conversion of Custom into Law to the first makers of States. Minos in Egypt, Sargon in Chaldea, Manu of Aryan India are credited with this service to the development of Law. Certain persons in authority pronounced their decisions or dooms, as they were called among the ancient Germans, on the facts of the disputes brought before them and as their knowledge of the customs of the people directed. Such men were the Themes of Homer's time, the Doomsmen of German Anglo-Saxon Law and the Panchayats of Indian villages. These men were one or many. They were either the tribal chief, or special judges, recognized, if not appointed, by the people on whose behalf they acted. Their judgments consolidated and collated the rules and regulations of Custom on a particular subject and fashioned them into distinct laws. They were published and brought to the general knowledge



of the people by word of mouth or through public heralds as in Ashanti and South Guinea to-day.<sup>1</sup> Or when a people knew writing, these judgments were fixed and handed down in script as by the Brehons in Keltic Ireland, who were really jurisconsults belonging to hereditary families and giving their *responsa prudentium* to whosoever applied for them, and thus preserved the customary law of the people in particular schools of Law. Maine calls this the transition from the period of customary Law to the period of the Codes which appeared in the same relative stage "in Greece, in Italy and the Hellenized sea-boards of Western Asia." The capture of customary laws in written codes not only secured the advantage of making these rules definite and known for certainty, but "they conferred on the societies which obtained them protection against the frauds of the privileged oligarchy and against the spontaneous depravation and debasement of the national institutions."<sup>2</sup> Or these judgments were fixed by periodical reading out of the law rolls as in ancient Germany or by the exhibition of tables of Law as in ancient China or as done by Moses,<sup>3</sup> or as in a later day by Esdras, the priest who read from the book of the Law of Moses "before the water-gate from the morning until midday, before the men and the women and all things that could understand."<sup>4</sup>

#### AGENTS OF THE TRANSFORMATION

Such collections of customary law and judgments based on them, whether they were carried in the heads of special persons or kept in the charge of corporations of persons entrusted with this business, were published in what we should call Law books to-day. They derived their authority either from the fact that they had already been recognized as binding by the people or from the fact that an authority which had the power treated them as if they proceeded from itself. It is generally

<sup>1</sup> Post, *Über die Aufgaben einer allgemeine Rechtswissenschaft*.

<sup>2</sup> Maine's *Ancient Law*, ch. I.

<sup>3</sup> Post, *Rechtswissenschaft*.

<sup>4</sup> *Book of Esdras*, II, c. 3.

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the central authority of a grown-up State that gives this push to Custom and brings it into the land of Law. It is from this central authority that kings or judges derived their power to transform Custom into Law. This central authority, which is so necessary for the transformation of Custom into Law, is generally embodied in the rule more or less despotic of a monarchy. To repeat the observation of Sir J. G. Frazer,<sup>1</sup> no human being is so bound by Custom and tradition as your democratic savage, and even the whims and fancies of a tyrant may be of service in breaking the chain of Custom which lies so heavy on the savage.

### LAW AND THE CENTRALIZED STATE

The history of Law in any country begins with the establishment of a centralized monarchy. This emergence of the State may be contemporary with a revolution in government. It may well be, as Ihering and Maine contend, that the written law of the Twelve Tables was precipitated by the agitation of the Plebs against the Patricians. Anglo-Saxon Custom was thus transformed into Norman law by some of the most despotic kings of all history. And it is not fanciful to suggest that the Hindu law books (the Laws of Manu, the Laws of the Aryas, etc.) were a sign of the victory of Aryan chiefs, of Aryan Law over Dravidian tribes and Custom in India. Nor is it unwarranted to believe that the persistence of Custom in India is due to the age-long absence of a strong centralized monarchy.

### LEGISLATION AND LAW

The establishment of a centralized State therefore ushers in Law in the place of Custom. The political unification of a country leads to a single system of law, as when the tribes that made Rome were brought together and brought about the birth of Roman Law, or as when the four ancient districts of Norway with their respective Things or folk assemblies were brought under one rule and the legislation of King Mag-

<sup>1</sup> *The Golden Bough* (one volume abridged edition).

nus Hakonarson (1263–1280) led to the foundations of a national law for Norway. Similarly in Iceland, Sweden and Denmark greater political union and integration led to the consolidation of a series of customary and local laws into one national Law. The collections known as the *Leges Barbarorum*, for instance the *Lex Salica*, the *Lex Ribuaria*, the *Edictus Langobardorum* were the customary laws of West Germanic peoples before they were brought under the unifying influences of Roman and Canon Law. The earliest of Hungarian laws are the laws of St. Stephen (997–1038), who gathered up the customary law of the Magyars. As the State became more and more organized, and government better obeyed and efficient, the development of Law received a great impetus. If a State possesses a definite law-making organ, whether single or multiple, continuous legislation will gradually extrude Custom from the government of the social relations of man. The legislation of the kings and Parliaments of the Norman and Plantagenet times gradually converted the customary laws of a number of peoples and districts into the Common Law of England and increased the quantity of statutory law. English legislation killed Celtic Law in Ireland. The so-called Laws of the Franks, the Burgundians, the Allemanni gave way in Germany to the persistent *Capitulae* and *Leges* of the Carolingian Emperors. The royal *ordonnances* of the French kings converted French customs into law. But it is not merely legislation, royal or parliamentary, that converted customs into law.

## JUDGE-MADE LAW

Not only the legislative authority, but in some States, more than the legislative, the judiciary played an active part in the making of Law. The transforming of Custom into Law by judges or similar officials is a familiar phenomenon at almost every stage in the history of Law. It was judicial declarations and recognitions that transformed Saxon and Norman customs into English Common Law, and the *Leges Wisigothorum* of Spain into real laws long before royal or parliamentary legislation

began its work. Even now Custom is one of the sources of judge-made law. We may observe this phenomenon especially in the Courts of British India to-day, where judges empowered by a central authority are daily building up law out of the customs of the peoples of India. Just as government is the more efficient, the more it is centralized up to a point, similarly, the judiciary really becomes a manufactory of law when it is centralized. One reason why Custom prevails among certain peoples is that among them there exist a number of equal co-ordinate authorities, dealing out justice as among the Ulusses or tribal commonwealths in Afghanistan, where each tribe is a law unto itself. The history of English Law began with the establishment of a central and hierarchically organized judiciary under Henry II. The persistence of the rules of Custom in India is due to the existence and work of a number of High Courts, which are equal to and independent of each other, and the Judicial Committee of the Privy Council is too far away, too busy and too much tied down by a supposititious Hindu Law collated from the works of ancient, academic jurists to set about the business of evolving a common Law for India. The hammering out of a national Law for India out of the customary laws of the people—which, as in the cases of Hindu and Mohammedan tribes in the Punjab and the Moplahs and their Hindu neighbours in Malabar, who are not divided in their legal life according to religion—would be possible with a Supreme Court in India, whose judges would be familiar with the circumstances and contexts of the legal customs of the people and open to the influences of unity and progress, rather than with a court placed as is the Judicial Committee of the Privy Council.

Among no other people has a strong centralized judiciary done more for the development of Law as among the Romans. It has been said that the history of the Roman Law can be learnt in the edicts of the Praetor. The *Edictum Perpetuum* served as the foundation for the Pandects. It was the Praetors who collated and co-ordinated and unified the ideas of cus-

## CUSTOM AND LAW

tomary law, and built them into the system that it afterwards came to be. Custom developed into Law in Rome also through the *responsa prudentium* rather than through actual legislation passed by the Roman assemblies. The interpretation of Roman jurists was the application of reason to law and legal procedure and served as a solvent of Custom. But in Rome, as elsewhere, express legislation did contribute to the displacement of Custom by Law.

## CIVILIZATION AND CULTURE AND LAW

Beside the development of the State and government, the growth of civilization and culture also helped the conversion of Custom into Law. The use of writing inaugurates this movement among a number of peoples. The acceptance of a new civilization leads to the reception of the law of that civilization. The Germans received Roman Law with Roman civilization. With the fall of feudalism there fell a whole body of customary law. With the growth of commerce, contracts became personal and less encumbered by ritual. Trade and industry are too active and expansive and inventive to be content with the regulations of Custom. The new industry based on capital and credit could not be regulated by the customs of mediaeval guilds. Religion also is a solvent of Custom. The Koran substituted the rule of Law for the reign of Custom among the Arab tribes. The Canon Law of Christianity was hostile, not only to particular Church laws as in Ireland of the Middle Ages, but to the Gallican liberties of modern France. Thus under the impact of one or other of these influences of history Custom gradually yielded its place to Law.

## TIME OF TRANSFORMATION

The transformation of Custom into Law takes place very early in the history of some peoples and very late in the history of others. As early as 3800 B.C., the customs of Chaldea were codified into laws, whereas Custom still persists in governing the juridical life of the peoples of India. The fact is, the trans-

formation of Custom into Law takes place early or late in the history of a people according to that people's philosophy of life and the progress of the State in its midst. An unprogressive people or one which has not succeeded in establishing a central government continues to be ruled by Custom. The obelisk of ManichTousu discovered at Susa proves, according to M. de Morgan,<sup>1</sup> that the Law of Property had been codified and that the social relations between men were regulated by Law and had ceased to be regulated by Custom as early as 3000 B.C. The obvious superiority of Law to Custom as shown in its definiteness, its certainty, its subjectiveness, its easy changeability, made an instant appeal to an eminently rational people like the Romans. The first makers of Rome, Romulus, Numa Pompilius, Servius, Tullius, according to the Roman tradition preserved in Livy, were makers of Law, even if they only codified the mass of already existing Custom. It was probably the superiority of Law to Custom which made its emergence first in the sphere in which certainty and definiteness were most required, that is in the sphere of private law and civil procedure rather than in the sphere of public law or criminal justice in which Custom came to be displaced only later by Law.<sup>2</sup> The thing to be remembered about the laws of Draco is not their severity, for that is found in all ancient Law, but the quality of certainty which they possessed.

Whereas among peoples like the Romans and the Greeks, regulating their life by the light of reason, and unafraid of useful change, Custom easily and early gets transformed into Law, among the people of India, lacking political unity and free from the restless rack of reason and progress, Custom still reigns supreme. The advantage of the early transformation of Custom into Law when Custom is still the habit of a simple, sane and unsophisticated people is illustrated in Maine's famous comparison of the effects of the early codification of law among the Romans and the late codification of laws among

<sup>1</sup> Morgan, *Les premières civilisations*, p. 245, footnote 4.

<sup>2</sup> Ihering, *Geist des Römischen Rechts*, Vol. II, Sect. 25.

the Hindus, among whom a number of particularistic, temporary, casual customs had been given the qualities of uniform and universal law. The play of Reason upon legal notions as upon other branches of knowledge also has transformed Custom into Law. "I know no reason," says Maine, "why the law of the Romans should be superior to the laws of the Hindus, unless the theory of Natural Law had given it a type of excellence different from the usual one."<sup>1</sup> A theory of natural law might probably have been given to Hindu India by Buddhism if it had not disappeared from the country. It remains to be seen whether the principle of Nationalism will give India the saving theory which will help to rescue Hindu Law from its unsuitability to modern circumstance.

#### NEED FOR CUSTOM

The fact that Custom has had to surrender its place to Law does not carry with it the view that Custom has been blotted off the face of society. Human ideas and institutions do not disappear with such completeness. They persist provided there is a germ of good in them and provided they restrict themselves to forms which are allowed them by the progressive trend of events. Provided they do not put forward pretensions to rule the roost, they may be given a corner in which they could exercise themselves for the benefit of man and society. Custom when it was excluded by Law from the supreme government of ancient society was still allowed some small sphere of influence. Among the Romans, Custom in the form of *boni mores* did much to temper the brutal severity of some of the rules of Roman Law. Through the censorship, through the condemnation of *infamia*, and through public opinion expressed in the assemblies, the *potestas* of father over child, of husband over wife, of master over slave, of creditor over debtor, was kept within the bounds of humanity. Even now Custom is one of the most important sources of Law. Even in the most highly developed systems of Law there is always a substratum of

<sup>1</sup> *Ancient Law*, ch. IV.



customary law. Common Law in England is still the main part of the law of England. Custom is one of the supports of the Law of the English Constitution, and gives it its most active and fruitful principles. Within Russia there exists an enormous number of local customary laws which all the despotism of the Tsars has not been able to crush and which the greater despotism of the Soviet may not abolish. Of judge-made Law which forms a large part of law-making in most progressive States, Custom is the basis. Custom reigns supreme in a country like India, where social unification is still incomplete and a large part of the law administered in Indian Courts is customary law. According to Dr. Burnell,<sup>1</sup> Custom has always been to a great extent superior to the written law in India, and the Madras Civil Courts Act of 1873 bids the Courts to allow the force of law to every well-established custom, and the Privy Council in the Ramnad<sup>2</sup> case has expressly declared that under the Hindu system of Law "clear proof of usage will outweigh the written text of the Law."

#### CUSTOM IN MODERN TIMES

The persistence of Custom, in spite of the large place filled by Law in modern juridical life, is not hard to account for. Law, whether made by legislatures or judges, cannot provide for everything. Progressive life produces new customs. Law generally lags behind life. But for Custom much of modern life would be bereft of the rule of law. It is Custom and the judicial recognition of Custom that provide for the legal regulation of social facts and circumstances as they arise and soon after they arise. It is a good thing that Custom still persists to rule the relationships of men, for some of its ancient characteristics like its fluidity and elasticity still make it superior to Law as a regulator of life. Custom is also sometimes more progressive than Law. In India, for instance, many of the old principles of Dravidian customary Law were more progressive than the

<sup>1</sup> Quoted by Nelson, *A View of Hindu Law*.

<sup>2</sup> *Collector of Madura v. Muthu Ramalinga Sethupaty*, 12 Moo. I.A., p. 436.

principles laid down by the texts of Hindu Law. The ancient Dravidian customary Law allowed the marriage of widows and the non-division of family property, the adoption of a son by a widow, principles of a progressive society, which have been refused recognition by courts dependent on the texts of certain writers of Hindu Law.<sup>1</sup> The rule of equal partition of property among sons, *putra-bhagam*, which is the cause of the fragmentation of holdings, the running sore of Indian agriculture, is alleged to have been due to Brahminical writers, and the old usage of unequal partition, e.g. Jyeshta Bhaga has now been held by decisions of the Madras High Court, under the influence of the Mitakshara system to be no longer valid.<sup>2</sup>

#### CUSTOM AND SOCIETY

Apart from acting as a source of modern Law, there is another sphere of influence in which Custom acts in modern times. While Law regulates the State, Custom still regulates Society. Although Custom in the form of legal rules and regulations now governs only a small portion of the life of man in the State, it controls a large part of the life he leads in Society. The modern State has not swallowed up Society except in the systems of German *Realpolitiker*. There is still a large part of the life of man in Society which is not under the jurisdiction of the State. What he shall eat, what he shall wear, whom he shall marry and with whom he may congregate, his social life in fact as distinguished from his political life, is usually determined by Custom. His social manners and modes, his recreations and amusements are decided by Custom. The relations between husband and wife, between parents and children, between the members of different classes and groups, are regulated by Custom. It gives a uniformity and a regularity to social relationships which would become erratic and lawless but for it. Routine is a restraint upon the eccentricity

<sup>1</sup> See J. H. Nelson's *A View of Hindu Law and Prospectus for the Study of Hindu Law*.

<sup>2</sup> Mayne, *Hindu Law and Usage*, ch. VII, para. 243; ch. XV, para. 488.

and vagaries of individuals and gives weight and poise to social life.

Law would become monstrous in size and irritating in action if it tried to regulate all the thousand and one little but important actions and relations of social life. And Law could not do it even if it tried. Law generally succeeds in preventing wrong things being done. It rarely commands right things to be done. It is a preventive or a cure rather than an incentive. It is negative rather than positive in its work. But Custom on the other hand is more positive and active. It makes people do things. In the family, the club, in rural and urban society, it is Custom that helps social life to go with a swing and with rarely a hitch. It keeps man in that state of life to which he has been called. It keeps each class of society and grade to its work, it prevents one from encroaching on the bounds of another. Custom is the force which keeps the social planets and stars in their appointed orbits without flying off into space or crashing into each other. In this larger and more modern sense Custom does not mean mere fashion in external things like dress. It is part of and is inspired by morals. The Romans had one single word for expressing the moral and social aspects of Custom. It is Custom inspired by morality that keeps Society and through Society the State on its rails. *Moribus antiquis stat Res Romana*. "Plus d'états," says Montesquieu,<sup>1</sup> "ont péri parce qu'on a violé les mœurs que parce qu'on a violé les lois."

#### FREEDOM OF CUSTOM

All this beneficent work for society Custom may and can do on one condition. It must possess the principle of freedom. Custom must be free to change. Freedom is in fact the law of its being; if it is meant for the welfare of society, it must change according to the changing needs and circumstances of Society. It must be remembered that Custom comes out of the life of a people. The Latin word *mores* shows the connection

<sup>1</sup> *Grandeur et décadence des Romains*, ch. VIII.

between the customs and the moral life of a people. It is a means to an end and not an end in itself. It is a servant and not the master of society. Custom becomes the enemy of society when it makes itself unchangeable. It petrifies society and itself becomes a stone and ceases to be the sap of growth. When Custom does not change, it makes society immobile and unprogressive. It is a mistake to think that immobility was the note of Custom in ancient society.

Custom, left to itself, never loses the principle of growth and adapts itself to society as the history of ancient institutions shows. Private individual revenge gave way to family revenge. This in its turn turned to kin-revenge and then to punishment by the State when the strong authority of a central government was established. Endogamous marriage is replaced by exogamous marriage, or vice versa. Primogeniture displaced gavelkind and borough English as forms of succession. All this was done under the influence of ancient Custom. According to the law of its being Custom has to grow, though slowly, because the whole people has to move and many generations have to join in the work. But to say that Custom is in itself the spirit of immobility is to fly in the face of the facts of history. It is only when Custom is brought under the yoke of some religious dogma, as the doctrine of Karma or of a philosophy like Pantheism, that Custom sterilizes a people into immobility. It is then that Custom in the words of Montaigne becomes "a violent and treacherous schoolmistress unmasking a furious and tyrannic countenance against which we have no more the courage and the power so much as to lift up our eyes." Custom must live free and exist only in the minds and memory of a people. By embodiment in a book like the Code of Manu, it is ever afterwards treated as a code of laws. The Judicial Committee of the Privy Council, by taking its stand on certain texts of Hindu Law, have legislated against the social progress of India, as when it decided (*Collector of Masulipatan v. Cavalay Venkata Narainappah*),<sup>1</sup> that inheritance

<sup>1</sup> *Collector of Masulipatan v. Cavalay Vencatea*, 8 Moo. I.A., 514.

derived by a woman from a male in her husband's family could never confer absolute rights of property. Custom then loses its capacity for progress and acts as a drag upon the people. And while we may not agree to the thesis of Mr. J. A. Nelson<sup>1</sup> that it is unhistorical to administer the Hindu laws of the Sastras and the Smritis in South India, it would conduce to social unity and equality and progress if, as the judges did in mediaeval England out of the customs and usages of the Anglo-Saxon tribes, the courts in India were to crystallize by their judgments the distracting and bewildering customs of the innumerable castes of South India into laws that will for the future bind them in a common life of Law. Custom in its essence belongs to life and not to death, to progress without being a source of unrest, to freedom without leading to anarchy. Beneficent is Custom when the principles of progress and stability, of freedom and order are held in it in a happy equipoise and balance. And happy are the people whose customs possess these complementary virtues that preserve and perfect social life.

#### SERVICES OF LAW TO POLITICAL UNITY

Law when it became transformed out of Custom continued to do for the growing State on a larger and more progressive scale work that Custom had done for Society and the infant State. The work of any human idea or institution is largely determined by its origin, and the manner in which it is born decides its life work. Law arose largely out of the unification and consolidation of the State. Law and the unity of the State came together, and the greatest service of Law to the State is to strengthen that unity. Law binds peoples together. *Lex* has been derived from a word meaning to bind. Law was made by the State, and Law returns this service to the State. Law, like Custom, is the regulation of man's social life, but the work of Law is of a higher order. Custom does its work of holding society together on a small scale for small, simple, homogeneous peoples. But while Custom is local or provincial or tribal, Law

<sup>1</sup> In his *View of Hindu Law and Prospectus of a Scientific Study of Law*.

is national or imperial. Law unites a people on a large scale for large territories, for populations consisting of different nationalities and of many classes and groups. Custom is the consequence, not the cause, of the unity of a people. Law if not the *causa causans* is the *causa constans* of the unity of the State. Law achieves that conquest over space and time which Custom finds it difficult to override. The superior the system of Law the greater is its empire. Roman private Law, English Common Law and the Code Civil of France have made their victorious tour of the world, thanks indeed to their intrinsic worth, but largely, to their integrating influence. While the force of Custom is confined to a locality, Law dares to override the frontiers of land and peoples. Law actively and positively promotes political unity. Roman Law preserved the unity of the Roman people, who by Custom had been divided into tribes. And it did this even when the Roman people consisted of different nations and were spread over a whole continent. English Law, forged in the Curia Regis of the Plantagenet kings and the Parliaments of the Lancastrians and the Tudors, in the Star Chamber and other Tudor Courts and in the Court of King's Bench, riveted and fastened the unity of England. The English monarchy in mediaeval England became secure only to the extent to which the king's writ could run in England. The Merovingian kings of France could ape the Roman emperors as law-givers, but could not imitate them as executors of their decrees. The legislative work of the later Capetians and Valois of France, who overrode and broke up the provincial laws of the provincial estates of France, preserved the hard-won unity of the French State. It was partly because the central government of the Holy Roman Empire did not possess legislative machinery that could turn out laws in the number required, that the disintegrating forces of feudalism and the autonomy of the German Duchies, which had their own Diets, could never be overcome. It is the one common law of the United States of America that is moulding the hurly-burly of European nationalities into a new nation and that is counter-

acting the centrifugal tendencies that belong to the spirit of federalism.

And a large part of the unity of India at the present moment is given by a Common Penal Code, and Criminal and Civil Procedure Codes and a Law of Contracts. The lack of legal unity is one of the chief causes of political disunion in India. One of the greatest obstacles to the political unity of India has been the reign of the innumerable caste-customs of Indian society. And the English Judges who were confronted by these customs and usages that divided people from each other lost a great opportunity when, instead of trying to evolve a great system of common law, if not for the whole country, at least for whole provinces, they simply gave them the permanent recognition of Courts of Law. By trying to bring these customs into harmony with or to replace them by a supposititious Hindu Law which existed in learned treatises, they only succeeded in prolonging the reign of communal laws in the country. By recognizing the so-called Hindu Law for Hindus and Muhammadan Law for Muhammadans, they prevented the evolution of a common law for both Hindus and Muslims according to provinces. For instance, a common law for Hindus and Muslims might have been evolved for the Punjab out of Punjab customary Law, which is even now applicable in some cases to both communities. It might have been applicable to both sections of the people. They might thus have transformed Punjab customary Law into a *lex loci* for the Punjab. They might have reared a common law for India in this wise. They have succeeded in only prolonging the reign of communal law in India, and not the least difficult of the problems of Indian statesmanship is to bring about the legal unity of India by evolving a synthesis of the laws of property, of succession and inheritance, so that the communal laws that stalk the land may not stand in the way of the unification of the country. How much the establishment of a Supreme Court in India, and not merely for India, as the Judicial Committee of the Privy Council is in England, may do for



the legal unity of India, one may visualize who knows what the Courts at Westminster have done for the hammering out of a Common Law for England. The different High Courts in India "ganging their own gait" in regard to Hindu Law will remind the student of the twelve provincial *parlements* of France, each claiming equal jurisdiction with the other and each developing its own jurisprudence. Political unity is one of the greatest services rendered by modern Law to the State. As Molinaeus, quoted by Maitland in his lecture on *English Law in the Renaissance*, says, "Nihil aptius, nihil efficacius ad plures provincias sub eodem imperio retinendas et fovendas nec fortius nec honestius vinculum quam communio et conformitas eorumden legumve utilium et aequabilium."

The service rendered by Law to the unity of a State is vividly brought to men's minds by the fact that in all States the legislature is the national representative assembly of the people. The legislature in all States symbolizes the national unity of the people. This importance of the legislature in the eyes of the public is no doubt exaggerated, because it is forgotten that the national executive can be as good a representative of the people, in fact it is a more continuous and visible representative, and at times of crisis is the only representative of the State. But the exaggeration of the idea must not blind us to the truth in it.

#### LAW AND POLITICAL INTEGRATION

The services of Law to the State do not end with its work in preserving and strengthening its unity. Law not only promotes the unity but preserves the integrity of the State. In some States special laws of treason bring out the uniqueness of offences against the State. In many States the law of treason has been developed at the expense of the liberty of the subject. Treason has often been treated as *crimen exceptum* and as *crimen laesae majestatis divinae*. In States that are in the making, as in the Middle Ages of Europe, political offences were looked upon as the most serious of all, and Grotius<sup>1</sup> branded them as

<sup>1</sup> Quoted in Coudert, *Certainty and Justice*.

the most atrocious act of the evildoer, and it is only from about 1830 that extradition began to be refused by modern States for political crimes. That crimes as contrasted with civil wrongs aim especially at the life of the State probably accounts for the fact emphasized by Maine that at Rome until very late it was not Courts of Law, but the Assemblies or Committees of the legislatures that proceeded against them. In England also, the greater crimes were tried in the High Court of Parliament. Impeachment and Attainder are still acts of the legislature.

Law also strengthens the social solidarity of the State. A law of Agency emphasizes the dependence of the members of a State upon one another. A law-governed State is a thing of peace and beauty. The order and peaceful development of the Roman State until the time of the Punic Wars were due to the reign of law in Roman life. The Roman respect for law is illustrated by the legend of Romulus killing his own brother Remus for disrespecting the boundaries of the city laid down by him, and of Brutus who killed his sons for treason to the State. Even the party quarrels of the Romans were more orderly than those of the city-States of Greece, as will be recognized if we compare the peaceful secession of the Plebs to the ostracisms, the confiscations and exilings of the Greeks. And among the causes of the decline and fall of Rome, Maine gives high prominence to the revolutionary proscriptions when the State was *solutus legibus*, for "no cause contributed so powerfully to the decay of political capacity in the Roman people as this periodical abeyance of the laws."

#### LAW AND POLITICAL EDUCATION

Law is the earliest political educator of a people. The Twelve Tables were from the beginning, in the words of Arnold,<sup>1</sup> not only the legal but the political catechism of the Roman people. It is Law that first introduces a people to politics. The initial secular influence that played upon the State was that of Law. A State receives its form and content from the legal ideas and

<sup>1</sup> *Cultur und Rechtsleben.*

## CUSTOM AND LAW

concepts of its peoples. So much so that a famous American scholar, H. C. Lea, believed that one could deduce the political ideas of a people from its laws.

## LAW AND LIBERTY

Law also is the best guarantee of liberty. Where Law is, caprice, whether of an individual or of a people, cannot exist. It is on a good system of criminal law, says Montesquieu,<sup>1</sup> that the liberty of the citizen chiefly depends. One of the differences between the ancient and mediaeval conception of the State was that, according to the former, the law was under the State, whereas according to the latter the State was under the law. The German emperor, the head of the Holy Roman Empire, had to answer in law to the elected Palatine. As Arnold puts it, the mediaeval polity was a *Rechtsverfassung*, not a *Staatsverfassung*. And although according to modern political philosophy the ancient concept of law being under the State has once more become popular, thanks to the influence of the Renaissance, the best safeguard against the tyranny of a Democracy is law. Law secures to each man his rights and his liberty. It guarantees *suum cuique* which, according to Lord Acton, is the very principle of liberty. The weak and the helpless, women and the poor have their personal enjoyment of life, property and liberty guaranteed to them. Equality can be maintained only by law, and the first equality achieved, which also seems to be the only equality realizable by man, was equality before the law.

## LAW AND PROGRESS

Progress also owes a great deal to Law. In truth, law spells progress. Law brings in law-making. Unalterable laws are a contradiction of the idea of Law. It is only a stationary society that is doomed to unalterable laws. Law must be sensitive to the changing conditions and circumstances of life. Otherwise it could not be true to one of its regulating ideas which is

<sup>1</sup> *L'Esprit des lois*, Liv. XII, ch. 2.

Justice. It certainly must do this in conformity with its other conditions which is Certainty.<sup>1</sup> The doctrine of *Stare decisis* must no doubt be sacred to any body of administrators of law. But its reconciliation and harmony with the higher ideal of social justice is the mark of every good system of law. Although it is true, as Maine says, that social necessities and social opinions are always more or less in advance of law, it is also true that the greater or less happiness of a people depends on the degree of promptitude with which the gulf is narrowed.

Whether through a legislature or through judges interpreting law according to life and helped by equity, for, as has been happily said, the equity of one generation becomes the law of the next, or with the aid of the device of fiction or of the method of distinction, law is made the servant and not the master of life. Laws and law-making are the signs and proof of all free and progressive life. Laws and law-making are the marks of the fully developed State. The States of Greece and Rome were law-giving from the beginning, while the early mediaeval States of Europe and stationary States got on with little law-making. F. W. Förster often speaks of the free self-governing individual as a law-giving individual. Similarly, no State can be said to be free and self-governing and progressive unless it is *gesetzgebend*, a law-making or law-giving State. Law is not hostile but helpful to vision. The Law and the Prophets go together. Jeremias speaking of the last days of his people says "Non est lex et prophetae ejus non invenerient visionem a Domino."

#### LAW AND ECONOMIC PROGRESS

No department of social life has owed more to law and law-making than the life of industry and commerce. While agriculture<sup>2</sup> can get on with just those laws that are necessary for the security of life, liberty and property, special laws are neces-

<sup>1</sup> See a brilliant attempt at reconciling these two ideas in Coudert's *Certainty and Justice*.

<sup>2</sup> Cf. Montesquieu, *L'Esprit des lois*, Liv. XVIII, ch. 9.

sary for the development of commerce and industry. A de-ritualized law of contract was found necessary by ancient Rome for the development of trade and commerce, and its world commerce was helped by a scientific law of contracts or of obligations as the Romans called it. Credit would be impossible without the laws regulating debts and the relations between creditor and debtor. It was Montesquieu's<sup>1</sup> view that if the principle and practice of *cessio bonorum* had been introduced early into Roman law, the civil disorders and seditions of the Republican period might have been avoided. Imprisonment for debt is the mark of an agricultural State. The consensual contracts of the Greeks vastly developed their maritime commerce, while the ritualistic contracts of the early Romans favoured only commerce by land. Currency and the exchange devices of modern times would be inconceivable without the special laws regulating modern instruments of exchange, like cheques, bank-notes and bills of exchange. Transfer of property is more difficult in an agricultural State than in a commercial State. For in the former land is the only form of property, and land cannot be made as mobile as cattle or cloth or furniture.

#### LAW AND MORALITY AND CULTURE

Not merely on the lower levels of economic life, but on the higher planes of morality, religion and culture is Law an energizing influence. The minimum amount of public morality necessary for the existence of a State is ensured by a law of crimes. Law has done great things for civilization and culture, for it ensures a peaceful political life which is necessary for their development. Law keeps the ring for the peaceful competition and the genial rivalry out of which civilization emerges. Towns are the centres of civilization, and Law settles much earlier in towns than in the countryside which is the native home of Custom. Municipal law played a great part in the development of civilization and preceded national law in Europe. Culture is not less indebted than civilization to Law. The history of

<sup>1</sup> *L'Esprit des lois*, Liv. V, ch. 15.

the literature of most peoples begins at the same time as the history of their Law. The art of writing was almost for the first time used in the promulgation of law. Law books were among the first literary works of many peoples, as were the Laws of Manu among the Hindus, the Laws of Hammurabi among the Babylonians and the *Leges Barbarorum* among the German tribes. Law and literature often make their bow together on the stage of national life. Chaucer's *Tales* came a short time after Bracton's *Notebook* and *The Laws and Customs of England*. Law schools were the only institutions of culture among many peoples, as were the schools of the Brehons in Ireland, and were among the first departments of the mediaeval universities of Europe. The law schools of Bologna made Italy the centre of European civilization and culture before Dante wrote of the Vision he saw. Law serves literature by guaranteeing the author a return for his work, and a good law of copyright, although it may not produce works of genius, encourages genius to produce them. The vast literary output of modern times is largely accounted for by copyright laws which make impossible the former piracy of literary corsairs. Law indeed does not produce civilization and culture and morality, but creates the atmosphere and the climate favourable to them.

## LAW AND RELIGION

Nor may religion deny the help it has received from law. The law is as necessary as the prophets for the life and progress of a religion. It is true law may petrify religion, but religion without law would only be flabby sentiment or personal mysticism or academic philosophy. The laws of religion make religion operative and pragmatic. The noble edifice of Canon Law has housed the life and activity of the Christian people, but has not proved a prison-house preventing the high initiative and saintly freedom of a Francis of Assisi, a Teresa or a Damien. Although we may not go as far as Maine,<sup>1</sup> who asserts without hesitation that the difference between the theological

<sup>1</sup> Maine, *Ancient Law*, ch. IX.

systems of Greek and Roman Christianity is accounted for by the fact that in passing from the East to the West theological speculation had passed from a climate of Greek metaphysics to a climate of Roman Law, yet it is not fanciful to believe that much of the rationalizing, practical, and pragmatic language of Roman Catholic theology may be traced to the influence of Roman law. Law gives religion the organization and government that are necessary for a religion as for any other kind of social life.

LAW, SERVANT NOT MASTER

While Law can render great service to religion and morality and culture, it can render this service only when it keeps within the limits laid down for it by the nature of things. Law serves these other needs of man only as a servant. Far from serving them, it would strangle them if it tried to treat them as master. It would petrify them with rigidity and formalism if it tried to dominate them. It has been said of Hindu society and oriental society in general that their politics and law are dominated by religion. It would be as true, if not truer, to say that it was law that dominated their religion and culture and made these latter formalized and stationary and unprogressive. The perpetual minority and old childhood, as Ihering<sup>1</sup> puts it, of the Chinese people are due to the fact that law dominated every part of the private and public life of the people. Morality and culture had no life of their own as they had among the Romans and all free and progressive peoples. The autonomy of Law is at once the sign and the proof of freedom and progress. The early distinction between *Fas* and *Jus* contributed much to the free and progressive development of civil law in Rome, while the identity of *Fas* and *Jus* in Hindu *Dharma* accounts for the comparative stagnation of Hindu law.

LAW AND LIFE

Of the ideas and institutions necessary for the making of a State, there are some which are not required for its preservation at a

<sup>1</sup> *Geist des Römischen Rechts*, Vol. II, Sect. 24.



later stage of its existence, while there are others that are always required to keep the State afloat. To the former class belong institutions like a strong and simple monarchy, a political priesthood, a landed nobility as the leading class, the three unities of kinship, religion and language; these may pass away and other institutions may take their place and keep the State alive. But Law, on the other hand, belongs to the class of forces which the State, small or large, city or nation or empire, whatever its government and social organization may be, and whether it is stationary or progressive, will always require. For Law is the life of the State. In fact there was one people in history, the ancient Romans, in this respect standing unique, as Hegel and Ihering<sup>1</sup> would have it, among the peoples of history to whom Law was prior in date and in importance to religion. If life in the State is in its very nature and essence a life of peace, it is Law which is the guarantor of that life. And never before has it been so necessary as at the present time.

#### LAW AND THE MODERN STATE

The modern State is so large, its organization so dependent on the will of the people, that only the unifying and co-ordinating and integrating influence of Law can keep the State together. In the social and economic sphere, the people of a modern State are divided into two camps, the capitalists and the wage-earners, the Haves and the Have-nots. Only law can keep these classes from flying at each other's throats. The respect for persons has become so worn out that only a widespread and deep-founded respect for law can maintain that obedience and loyalty which are necessary to keep the State standing. The place of personal loyalty to a chief or captain or a leader, which would be but a precarious cement of the large, overgrown State of modern times, must give way to or be gathered up in the institutional loyalty to law. If the rule of might is to give way to the rule of right, it can only be by and through Law.

<sup>1</sup> *Geist des Römischen Rechts*, Vol. I, Sect. 8, where Hegel is quoted.

## CUSTOM AND LAW

### LAW AND DEMOCRACY

Especially in modern democracy is the sovereignty of Law a vital necessity. The tyranny of numbers would be an implacable and intolerable tyranny, and Democracy would be the most tyrannical of all forms of government, if law were not there to rule it. Aristotle<sup>1</sup> reckons democracy, that is when it is uncontrolled by law, among the exceptional forms of government, for, as he says, where the laws do not rule, there is no free State, and law ought to be supreme over all things. He places Law next to God as the supreme ruler of man, and Demosthenes, in his definition which, according to Gierke, was adopted by Marcian and later found its way into the Pandects, describes Law as the *δῶρονθεων*. Law is the only possible restraint for the most capricious and despotic of rulers, Demos.

“And sovereign Law, at the State’s collected will,  
O’er thrones and globes elate,  
Sits empress, crowning good, repressing ill.”

### LAW-MAKING NOT A LUXURY, BUT A NECESSITY

Law is not merely necessary for the modern State, but on account of the position and influence of the modern State, law can be and must be used as an instrument of progress. Law-making is and has to be frequent and continuous in the modern State. In the popular view, legislation is considered to be the best and easiest method of reforming society. The factory of legislation is always active, but it is doubtful whether legislation is used as much as it may be used or as early as it ought to be used for the needs of a State. There is much legislative activity, but it is doubtful whether it is all to the point in principle and in time. In the first place legislation always lags behind the needs and problems of society. American legislatures have not yet made all the laws that are necessary for controlling the trusts and monopolies that have become such a menace to the economic and political life of the common people. Not till

<sup>1</sup> *Politics*, Bk. III, ch. XVI (Everyman’s Library trans.).

thousands of lives of women and children had been sacrificed in the factories of Manchester and Birmingham were the factory laws passed in England. Very often also Law solves only the problem of the moment, that part of the problem which is most insistent for the time being. What Bacon said of English law, that it is born of the prick of the moment, is true of modern legislation in general.

Perhaps this lagging of law behind the facts is just as well, for it ensures that law is well thought out and related exactly to facts. But there is the danger that law may not be the instrument of progress that it can and should be. Law must continue to be used in the interests of the great things of the State. Even now law is required to maintain the unity of the most unified States in the world. That unity is threatened by centrifugal forces from within. One cannot say that the legislatures in India are used as much as they ought to be for promoting the national unity of the people. Although, according to Machiavelli,<sup>1</sup> nothing honours a man more than to establish new laws and new ordinances when he himself has newly risen, legislation has not become popular with the new men of Indian democracy. Much might be done by way of laws for abolishing the dominion of Caste and releasing the people from the shackles of Custom. Of course there is the danger of conscious legislative activity that laws may be passed out of a love of theory or under the fascination of an idea. That danger, of course, is real and has to be avoided. But the fear of danger is only the beginning and not the main part of political wisdom.

## LAW AND LIFE

It is one of the commonplaces of modern jurisprudence that law springs out of life. "The spirit of a people and the spirit of a time," said Ihering, "is also the spirit of its law." It was so as Custom in its infancy. Law is meant to serve life and has always been related to it. Law can never deny its loyalty to life. Law is a function of life according to the famous expression

<sup>1</sup> Machiavelli, *The Prince*, ch. 26 (Everyman's Library edition).

of Savigny. Although law can influence life, it may not outrun it, for law exists in order to be obeyed. Although law may be imposed from above, it has to be obeyed from below, and it will not be obeyed if it contradicts the ideas or irritates the habits of the people for whom it is intended. If law is not loyal to life, people will not be loyal to it.

The connection of law with life is proved by history. The laws of a nomadic or an agricultural or an industrial people cannot be the same. The law of a State, says Aristotle,<sup>1</sup> will be like the State. Although property exists everywhere its content varies from people to people. Among primitive, economically backward peoples, crimes against the person preponderate, and the law of these peoples gives much attention to them. Among more civilized peoples crimes against property are held to be of preponderant importance by their law. Hunting and pastoral tribes are addicted to robberies and plunder, while petty larceny flourishes among civilized peoples. The law of a State depends on its economy. Crimes which morally are equally reprehensible receive among different peoples different legal values. A commercial people treats false coinage, defrauding of the customs, smuggling, more severely than simple theft. In the history of Roman Law, the law of things especially of immovable things as was appropriate in an agricultural State, came before the law of obligations or contracts which trade or commerce demanded. "Our increasing mastery of the physical world," says Maitland, "is always amplifying the province of law, for it is always complicating the relationships which exist between human beings."

#### LAW AND POLITICS

Law and Politics influence and control each other. The uniform egalitarian law of Rome corresponded to the centralized, absolute single-minded State, while the particularistic, communal, relative and varied law of the Germans corresponded to their particularistic corporative and decentralized polity. As is the

<sup>1</sup> *Politics*, Bk. III, ch. 11 (Everyman's Library trans.).

private law of a people, so will its public law be. If the latter is to ensure freedom and progress, the former must be imbued with them. If communal electorates are to disappear in India, the communal laws of the Hindus and of the Muslims must also go. The connection between legal and political science is intimate and frequent. More than one political idea that has swayed the minds and governments of man were once legal ideas. Maine long ago pointed out the connection between political theories of Social Contract and the Roman legal theory of Quasi-Contracts, and "that the conception of correlative rights possessed by the governed would have been entirely without the means of expression if the Roman law of obligations had not supplied a language capable of shadowing forth an idea which was yet imperfectly developed."<sup>1</sup> And the theory of a law of Nature, of Natural Rights and of Equality, did duty in Roman Law long before it was pressed into the service of modern politics.

As law is meant to serve life, its rules therefore must be related to the facts of life. The habits and customs of the people, their history and traditions, their qualities of character and conduct and the defects of those qualities, the social life of the people and their religious beliefs, all these must be taken into consideration by statesmen legislating for a people. But within the limits placed by these facts of social life, the capacity of law for improving social and political life is undeniable.

#### LAW NOT SUFFICIENT BY ITSELF

Although law and legislation can do much for maintaining the life and promoting the progress of a State, law by itself cannot stop political dry-rot once it has set in. A State derives its health from other influences. Law itself must derive its inspiration from these influences. Religion, moral regeneration, individual character, are the means by which corruption, once it has crept into social life, may be expelled. Law can only help the recovery of decadent States. It cannot by itself initiate the

<sup>1</sup> Maine, *Ancient Law*, ch. IX.

recovery of the State. All the laws and legislation of the Roman Emperors did not stop the downward incline of Roman morality. The *Leges Julia* which punished adultery severely and put restrictions on divorce and the *Lex Pappia Poppeia*, which encouraged child-bearing by granting certain privileges to father and mother, did not restore the old family discipline of republican Rome, as Augustus hoped they would. Tacitus's epigram *pessima república, plurimae leges* sums up the impotence of Law to save dying States.

And in regard to healthy States, although the foundation of law will be the changing conditions and circumstances of life, the motive to change must come to law from outside. It is the ideals of morality and religion that must be the beacon light of law. The *Peculium*, the *Dos*, the *Precarium* and the *Mancipatio*, which softened the harshness of Roman Law, were the consequence of moral impulses, and not a legal development. Maine has shown how the Christian Church, which "in its anxiety to put a curb on sanguinary ferocity sought about for authority to punish the graver misdeeds and found it in those passages of the Scripture which speak with approval of the powers of punishment committed to the civil magistrate," served the development of Criminal Law in Europe.<sup>1</sup> Law must be infused by morality if it is to serve the purpose of life. Not the best laws on contract can infuse that confidence and trust which are necessary for credit. Morality is the soul of commerce. Law can only be its defender. Law cannot and will not settle everything. A highly litigious people must be an uneconomic people. The statistics of litigation and of penal processes are an index at once of the wealth and of the folly of a people. Litigation, as Maine<sup>2</sup> has shown, is as much a proof of backwardness as primitive self-help, for which indeed it is the substitute. Legalism is as much a part of death as law is of life.

<sup>1</sup> Maine, *Ancient Law*, ch. X.

<sup>2</sup> Maine, *Early Institutions*, Lect. X.

## INSTITUTIONS

“Les hommes sont impuissants pour assurer l’avenir; les institutions seules firent les destinées des nations.”—NAPOLEON.

## DEFINITION

By the side of particular customs and laws by which man has regulated his social and political life there are certain bodies or groups of practices and usages that have played a dominant part in shaping him, whether as an individual or as a member of society. To these groups or bodies of practices and rules has been given the name of Institutions. As Institutions have been often confounded with other social creations of man, and as it is always well in any study of Politics to start with clear definitions of the terms we use, we mean by Institutions what Lieber,<sup>1</sup> an American political writer of the last century, defines as “a system or body of usages, laws or regulations of extensive and recurring operation containing within itself an organism by which it effects its own independent action, continuance, and generally its own further development.” Institutions in this sense are therefore to be distinguished from Customs and Laws, for although Institutions may be made of particular customs and laws and be regulated by them, it is only when these latter possess an unifying principle or cementing link that they go to form Institutions. Institutions are bodies of rules and regulations, whether governed by custom or law embodying and related to some social principle. Thus Family, Property, Slavery, Totemism, Exogamy are bodies of usage held together by common principles of social life. This meaning of Institution is supported by the usage of the English language and of English jurisprudence. One of the meanings given by the *New English Dictionary* and authorized by the use of men of letters, that

<sup>1</sup> *On Civil Liberty and Self-Government.*



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it is "a regulative principle or convention subservient to the needs of an organized community or the general ends of civilization," is applicable to it. And Maine in his lectures on *Early Institutions* speaks of the law and custom of the Family, Property, Marriage, Succession and so forth. This meaning, supported as it is by literary and professional usage, is to be preferred to Mr. MacIver's<sup>1</sup> narrow description of Institutions as but the "forms of order established within social life by some common will." For the real distinction between Institution and Custom is not that the one was established by a common will, and the other is the habit of a community (custom also owes its life to a common will), but that the one is a body of practices held together by a common regulative principle. And to deny the title of institution to the Family or to Class, as does MacIver, because they are made of associations of men, is to do violence to usage, to lose sight of the differentia of institutions and to bring such different groups as family and a political party into the same category of Association.

### NATURALNESS OF INSTITUTIONS

The institutions man has had to make for himself on his journey on earth, he made as one need or one instinct after another called for them. And they have been found so useful in realizing these instincts and answering these needs that man has become wedded to them. He has found them good and will not let them go. Some of these institutions have been everything to him, they have kept his body and soul together, saved all that was near and dear to him, helped him to keep the things he had earned, and served to form and organize the social life he liked to live in fellowship with others of his kind. Some of them he has found to be so constantly useful and, with necessary adaptations, so serviceable at every stage of his existence on earth, that he has come to look upon these as eternal and inevitable. Others he has found to be useful only for a time, and then when they ceased to be useful or began to be harmful

<sup>1</sup> In the *Modern State* (Macmillan).

he has cast them off to his profit. But good or bad, useful or harmful, lasting or temporary, it is through and by means of institutions that man has tried to realize his instincts and accomplish his desires.

## THE FAMILY

First among the institutions which man has instinctively evolved for himself is the Family. The existence of the individual family is proved by modern research to be almost universal. It is very few peoples that do not know the family, and even they, soon after they began their social existence, formed the family. "Prima societas," says Cicero, "in ipso conjugio est, proxime in liberos, deinde una domus." It is not only the first institution which early man created, it is the first institution into which every man ever afterwards is introduced as soon as he is born. The family breeds and brings him up. It is man's first group and society. As Arnold<sup>1</sup> puts it, "the family is the oldest state. Human social organization starts with it. It is the first temple, the first tribunal, the first workshop, the first club of man." It is there he first learns to live in fellowship with his kind. It is the family that first introduces him to the advantages and obligations of social life. In fact, as Ihering also points out, in the lower forms of political society the family plays the part of the State<sup>2</sup> and the jurisdiction of the modern State has extended at the expense of that of the family. It trains him in the ways of society. Cicero called it the "principium et quasi seminarium reipublicae." The family is the original and continues to be the formative group of society. "Keine Familie, keine Gesellschaft und keine Staat," says Frantz.<sup>3</sup>

The family is a natural institution required by the needs of man. The impulse to found a family drives every healthy man as soon as he is economically fit to do so. It is only in deference to some

<sup>1</sup> *Cultur und Rechtsleben*.

<sup>2</sup> Ihering, *Geist des Römischen Rechts*, Vol. I, Sect. 13.

<sup>3</sup> Frantz, *Die Naturlehre des Staats*, Bk. II, ch. VI.

supernatural call or in diseased societies under the dominion of a decadent selfishness that he refuses to found a family. The whole life of the family is governed by a natural impulse. The love, obedience and respect that govern the conduct of the members of a family towards each other are all natural and not the result of rational consideration. Religion only sanctions and sanctifies this natural impulse. The social importance and value of the family was realized by ancient peoples who all placed it under some supernatural protection. Marriage, which is the act that creates the family, has been placed under the protection of religion. It has been treated as a sacrament by almost all the peoples of history. It has been celebrated with religious ritual. The influence of religion is extended to the family through the whole course of its existence. Hindu society owes its stability not so much to Caste, to which it has been attributed, but to the religious influence that bound and held Hindu family life. Every important event in the Hindu family was established by a religious ceremony. The *Upanayanam*, the *Saptapadi*, or the tying of the *tali* among Dravidian peoples, the *Shraddh*, punctuated important stages in the Hindu's life. In fact the Hindu religion is largely a family affair. The temple does not fill such a large place in the Hindu's life as does the church in that of the Christian.

The holy respect in which the family has been held accounts for the vitality of the powers and the progress of Christian peoples, while the decline of every society that has gone down like the Greek and the Roman begins with the laxity of the marriage bond and the corruption of family manners. The increase in the popularity of divorce in England and the United States of America cannot long maintain the *Häuslichkeit* of women or the piety of children, which are the supports of family life. Genuine family life can be based only on monogamy. Love, which is the bond of family life, is possible only in monogamous unions. Only monogamy can guarantee the personality and freedom of women and the progress of society, as eastern peoples themselves, like the Turks and Egyptians,

are realizing after centuries of other experience. The integrity and manliness of Roman political life were due to the position of honour and dignity occupied by woman in Roman family life, as is attested by legend and history rather than by the bare rules of law. The "fever and the fret" of Greek political life may not fancifully be attributed to the position of slave or concubine held by the Greek wife. The other forms of marriage like polygamy and polyandry may be explained by historical causes, and may have been an improvement on looser unions that went before them. Their *raison d'être* is only that they are stages on the road to monogamy, and can never be accepted as a permanent form by any people. Divorce, however, is polygamy extended in space and time with none of the altruism and economic advantages of polygamy. Marriage is a social business, and the mere will of individuals cannot determine its beginning or end. Marriage, it has been well said, is the barometer of the morality of a people.

The discipline of the family cannot be obtained anyhow. Laws of succession and inheritance have had much to do with domestic order. The Romans called the *jus succedendi*, a *quasi dominium haereditatis*. The stern *patria potestas* of the Romans which gave the Roman father powers of life and death over his children and allowed him to sell them into slavery was later supported by the power of will-making; the will early in Roman history pushed out intestate succession, which may be held, as one accepted result of research, to have preceded testamentary disposition. The ancient Roman will was a public business, made in *comitiis calatis* and in the presence of the people. For the Romans recognized the political value of the will. Neither the English Law of primogeniture, nor the Hindu Law of equal partition of a man's property among his children is so conducive to family discipline as the Roman will, which was really an expression of the will of man, whereas the others made man the slave of a system over which he had no control. The Will was also unknown to the Greeks, Solon allowing it only to a childless person, and the Greek family

was never the disciplined unit that the Roman was. And it is the thesis of Le Play,<sup>1</sup> the great French social authority, that if the French family is to be restored to its old fertility and integrity, the Will must modify the mechanical and impersonal dispositions of the Napoleonic Code.

The constitution of the family cannot be a matter of indifference to society or the State. The character made by the family imprints itself in the State. The Roman family, with its stern discipline and training in the arts of leadership and obedience, made the Romans masters and captains of the world. Roman law would not allow suits to be launched between members of a family under *patria potestas*, in striking contrast to Hindu law,<sup>2</sup> which allows a son to sue for partition of family property. The *domesticus magistratus* of the Roman paterfamilias was a potent instrument of political and social discipline. The family tribunal saved much work for the public courts of justice. The Romans acted up to the maxim of Montesquieu<sup>3</sup>, that nothing preserves morals better than an extreme subordination of the young to the old. Maine believed that the moral revolution which Christianity was able to achieve was due not a little to the extension of the sphere of *patria potestas* brought about by the Emperor Caracalla conferring Roman citizenship on all his subjects in the Roman empire.<sup>4</sup> The Greeks, who were bent on the breeding of beautiful children, resorting to infanticide to this end, produced only the State beautiful. The Hindu family in the grip of the dead hand of the custom of equal division no doubt led to the even distribution of property and the multiplication of Hindu families, which was the reason adduced by Manu<sup>5</sup> for the introduction of the law of equal partition of land, but it is no longer required now when people speak of over-population and when land is no more as plentiful as it was in the days

<sup>1</sup> See his *La Réforme Sociale*, Vol. I, Bk. II, "La Propriété."

<sup>2</sup> See *Nagalinga Mudali v. Subramania*, 1 M.H.C., p. 77. Mayne's *Hindu Law and Usage*, "Partition."

<sup>3</sup> *L'Esprit des lois*, Bk. V, ch. 7.

<sup>4</sup> Maine's *Ancient Law*, ch. V.

<sup>5</sup> *Laws of Manu*, ed. Bühler, ch. IX, 111.

of Manu. The Hindu system also ensured the raising of the average. But the average was not high, and leadership and initiative were absent from the conduct of Hindu society, which marched in grooves marked for it for all time. The English law of primogeniture was feudal in origin, was required for aristocratic government, and has been the predisposing cause of all the enterprise and initiative of the younger sons who have carved out new paths of progress, while the eldest brother remained at home to preserve the stability of the permanent things of English social life. How much primogeniture has contributed to political amalgamation may be measured, as Lyall<sup>1</sup> observes, by the inability of some tribes as those of the Rajputs of Mullanee to build up any political system at all. But the Will, as it was not excluded by the law of primogeniture, which as a matter of fact is only applicable to land, no longer the only source of wealth, renders in modern England the disciplinary service it did in Rome. The equality proclaimed by the French Revolution was realized by Napoleon in the Code Civil, which, like the Hindu law of partition, succeeds in distributing land evenly, though much too evenly for the progress of agriculture.

## AS FAMILY, SO STATE

As is the Family, so is the State. Whether a family is small, with just one wedded pair and their children, or large, consisting of a patriarch and his wives and descendants in the agnatic line, determines the nature and activity of the State. Domestic slavery founded on polygamy is the support of the despotic State. And if Montesquieu's<sup>2</sup> generalization is true that popular government has always been difficult to establish in the East, its people will have to introduce the principle of freedom into the life of the family. The small individual family makes for initiative progress and enterprise, as is proved by individual and social activity in countries like England and the United States of America. The large joint-family, as it is called, makes

<sup>1</sup> *Asiatic Studies*, First Series, ch. VII.    <sup>2</sup> *L'Esprit des lois*, Bk. XVI, ch. 9.

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for stability, permanence and sometimes immobility, as in India.<sup>1</sup> The large patriarchal family with joint property and integral succession is required in the early stages of society, when number and stability were mainly required for the life of the State. The individual monogamous family with the will as its instrument of discipline is required by the needs of a free progressive society as is that of the modern State.

### HOUSING, OF POLITICAL IMPORTANCE

In view of the social and political importance of the family, its habitation cannot be a matter of indifference to students of the State. The home is the campus of the first social life of man. All civilized people have realized its importance. Among the Romans the *deductio in domum* of the bride, among the Hindus the *Grihapravesam* of the new bride, founded the life of an individual family. The peace of the home is preliminary to public peace. Not only among Englishmen has the home been considered as the citizen's castle. In ancient Rome the asylum, the sanctuary of the family, was immune against the visits of unwanted persons, private or public, except for grave public reasons. Ownership of a house is the most patent expression of personality, and is the index of even the prosperity of a people. The housing problem of modern times betokened by the insufficiency of houses, the prevalence of rented houses and of flats, the popularity of the hotel and the restaurant, is a sign and a proof of social instability and misery.

### THE STATE AND THE FAMILY

The constitution and government of the family is of paramount political importance, and modern statesmen and political writers neglect the family as an element in the constitution of the State only at the peril of the State. But this realization does not carry with it any right or duty of the State to interfere unduly in the inner life of the family. No intervention of law or State,

<sup>1</sup> See Le Play, *La Réforme Sociale*, and his monographs on the family life of European peoples for illustrative examples.



## THE MAKING OF THE STATE

says a great jurist, is so fraught with danger as that which is directed against the intimacies of family life. "Interference with succession," says Mussolini,<sup>1</sup> "strikes a blow at the institution of the family."

### FAMILY AN INSTRUMENT OF SOCIAL EDUCATION

So important and necessary did ancient societies consider the family, that they attempted to use the family as the means by which they realized their instinct for expansion and advance. When these societies wanted to increase the number of the people constituting them, they could think of nothing better than artificially enlarging the family. Kinship was the only bond of union known to primitive society. Sir Henry Maine,<sup>2</sup> never tired of reminding his generation, that, "kinship in blood was the sole possible ground of community in political functions in primitive society." What could be more natural than that the primitive man for the purpose of increasing the number of members of his society for better defence and for increasing the strength of his society should add to the members of his family? He could extend only through a group, and the family was the only group known to him. There were limits to the natural increase of a family. So he struck the idea of fictitious kinship. He invented a useful institution. According to Maine, the earliest and most extensively employed of legal fictions was that which permitted family relations to be created artificially, and he declared his conviction that there was none to which he conceived mankind was more deeply indebted.

### ADOPTION

Adoption was the fiction employed by primitive society to extend its number and size. The modern idea, to use again the words of Maine, "that a number of persons should exercise political rights in common simply because they happened to live in the same geographical limits was utterly strange and

<sup>1</sup> *Autobiography*, Eng. trans., p. 242.

<sup>2</sup> *Ancient Law*, chapter on "Adoption."

monstrous to primitive antiquity.”<sup>1</sup> The only way by which primitive society could expand in number was by artificially extending the bonds of kinship to strangers and bringing them into a family. It is no refutation of this view that Adoption among most of the peoples that used it had a religious origin. The Hindu took to Adoption in order to save the soul of the father to whom and to whose wife the birth of a son had been denied. Among the Romans, Adoption was made under the auspices of the *sacra gentilica*. It only proves the social service that religion rendered to primitive society by sanctifying one of its most useful institutions. But whether accompanied by religious ritual or not, Adoption was fairly general among primitive peoples. It is found among tribes as far apart as those of the Andamans and the Torres Straits islands and among the Chiutchis and the Crow Indians.<sup>2</sup> Among the Hopis “several very small mother-sibs were not composed wholly of individuals related to one another by blood, but could be separated into two or three distinct matrimonial groups, which regarded themselves as one by a legal fiction, that is by Adoption.” Among the Ethiopian Gallas of Eastern Africa “so close is the tie formed by Adoption, that even if the couple should afterwards have offspring of their own, the adopted child retains all the rights of the first-born.”<sup>3</sup> The fiction of a new birth has, according to Sir J. G. Frazer, been accepted in cases of adoption among peoples as widely separated from each other in history and geography as the ancient Greeks, the mediaeval Spaniards, certain tribes of to-day in Bulgaria, among the Turks, the Klementans of Borneo and the pastoral Behimos of Central Africa.

The fact that the institution of Adoption has been so widespread shows that it played a great part in the making of ancient society. It was the device invented by man for getting out of the confines of a kin-bound society. But for some such institution it is doubtful whether primitive society could have expanded. Outsiders had to be brought into the family from

<sup>1</sup> Op. cit.

<sup>2</sup> Lowie, *Primitive Society*, ch. IV and ch. VI.

<sup>3</sup> J. G. Frazer, *Folklore in the Old Testament*, Vol. I, p. 6.

the rest of the tribe or even from other tribes. On what scale this was done we have no means of ascertaining. Evidently by its very nature it could not have been used on a very large scale. It is obvious that the number of strangers adopted into a family would depend on the wealth of the family. And generally Adoption was resorted to only on failure of natural heirs. The main service of ancient adoption was probably to transfer men from poor and fertile to wealthy and barren families. And when Adoption came to be crossed and restrained by Caste, as it was in India, the range of its utility was certainly reduced. But such as it was, Adoption was one of the first devices invented by man for breaking the hard shell of primitive society. But for it, it is doubtful whether primitive society could have taken the first step onward and ahead which has brought it to its present position. Without the fiction of Adoption, says Maine,<sup>1</sup> "it is difficult to understand how society would ever have escaped from its swaddling clothes and taken its first step towards civilization."

## ADOPTION IN MODERN TIMES

The force of Adoption was not exhausted in early society. It is still used as a social institution in Hindu India. The perpetuity of the Hindu family is secured by it. A rich family is always assured of an heir. Poor but promising youths are thus enabled to carve out a career open to talent. Within the limits of Caste, Adoption serves the purpose of a public endowment and of the rich bachelor uncle of the west. In the field of public law Adoption was useful as a means of ensuring the peaceful succession to the Principate of the Empire of Rome. In ancient Japan, a recent writer<sup>2</sup> has shown, that as adoption was the rule rather than the exception, the failure of a direct heir to the throne or Shogunate presented little difficulty, and it was in fact the secret of their stability and unbroken continuity. And in modern times it survives in the Native States of India and creates one of the greater problems of Indian statesmanship.

<sup>1</sup> Maine's *Ancient Law*.<sup>2</sup> Gubbins, *The Making of Modern Japan*, ch. I.

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It is interesting to speculate what would have been the present political position of India if Lord Dalhousie's doctrine of Lapse had won against the Hindu doctrine of Adoption. The frequent failure of male issue among Indian princes might have brought the unity of India a little nearer perhaps and made India look a little less like a patch quilt. But it might have increased the difficulty of the task of British Indian government by the destruction of so many centres of old-world stability and diversity. This, however, is speculation. What is not speculation is that a large number of polities in India which would have gone down in the course of history have been kept afloat by the institution of Adoption. And in some cases, as in the Rajput State of Kerowlie in 1817,<sup>1</sup> where a grown-up person was adopted instead of a child, the cause of good government has been served.

### LIMITATIONS OF ADOPTION

Adoption, however fruitful as a first step, could not have brought primitive society very far on its march of expansion. It could have been used only on a small scale. If Adoption had been the only means of expansion society could have been set only half free. For one thing Adoption could play only within limited room-space. In ancient Rome, in practice the large majority of adoptions was of cognatic kinsmen,<sup>2</sup> and in Hindu society Adoption never looked beyond one's caste at the most and not frequently beyond one's blood-relations. Fortunately for primitive society, it blundered upon another institution which carried it much farther forward and made it capable of almost indefinite extension. The institution which played this larger part in social life and political evolution was Slavery.

### SLAVERY

To us Slavery appears as a thoroughly evil thing, as a scourge of humanity, the cause of untold suffering, a blot on the fair

<sup>1</sup> Lyall, *Asiatic Studies*, First Series, ch. VII.

<sup>2</sup> Maine's *Early Law and Custom*, ch. IV.

name of our race. No one nowadays has a good word to say for it. It has been treated as a curse, compendiously condemned as the Nemesis of nations,<sup>1</sup> and men turn pale at the thought of its continued existence and blush for their kind as long as it exists. But we might ask ourselves whether this perfectly right attitude of modern man to it is, after all, not a tribute to the strength and service of slavery. Men kick off the ladder by which they have risen, not so much because they are ungrateful, but because the ladder has done its work and simply stands in the way. Men try to forget and repudiate their humble beginnings once they have crossed the threshold of great things. So is it with nations and peoples. There is a kind of snobbery which makes them repudiate and forget their past, the very things which have made them what they are. Our civilization and culture make us repudiate and condemn slavery. But most civilized and cultured peoples have risen out of it. Slavery must have been a strong thing for us to hate it as we do. It is not weak-kneed, spineless institutions upon which men waste their scorn and fear. Contempt is good enough for such bloodless things. But men do not treat slavery with contempt. They respect it enough to fear it, and nothing makes their pulse beat faster with trembling than the fear of its return.

Slavery was a strong thing, it was a cruel thing. It must also have been a serviceable thing. For it was widespread. No human institution could have been wholly evil that man has adopted and used all over the world. Without taking it from one another but independently, in answer to some common need, men have ever made use of slavery as a means of social organization. It was first of all used as a means of increasing the size of the family. Adoption did not go far enough. However wealthy a family may be, it could want only a few children to adopt—most often not more than a son. But there was no such limit placed to the number of slaves a family may have. Its wealth, its capacity to afford support in food and clothes, the leisure and freedom from work that the members of the

<sup>1</sup> See Paterson's *Nemesis of Nations* (Dent & Co.).

family wanted—these were the limits placed on the number of slaves the ancient family might have. It was thus that the family in ancient Greece, in ancient Rome and in Vedic India increased its size. But it was not only a family institution, and it was because Slavery could be used outside the family for the purpose of enlarging the State that it was found to be much more useful than Adoption. Besides family slaves there were what one might call State slaves among most primitive peoples like the Helots at Sparta. Bands of these slaves were admitted into the State and were made members of the State without having all the privileges and obligations of the free and full members of the State. The foreigner, e.g. the *xenos* and *hostis* of ancient Greece and Rome, was admitted into the primitive State through the door of slavery. In Polynesia, among the Mongols, the Arabs, in ancient Wales, strangers were incorporated in the tribes through slavery.<sup>1</sup>

#### ORIGIN OF SLAVERY

The origin of slavery was various. War and conquest were the most frequent origin of slavery. We who condemn slavery as being utterly evil ought to remember how great an improvement slavery was on the wholesale slaughter here and there distinguished by cannibalism, as among the Batlaks of Sumatra, which was the fate of primitive peoples who went down in the fortunes of tribal warfare. "Where slavery does not exist," says Letourneau<sup>2</sup>, "wars are very sanguinary, as in New Caledonia." It was entirely a step forward when men, instead of killing off their fellow-men, saved their lives and made them work for them, albeit under duress. It was thus that the population of the primitive State was increased. The States of Ashanti, Abyssinia, Madagascar were built on a population of slaves whose number was enormous. Nor were these slaves everywhere treated with the cruelty traditionally ascribed to the institution. "Among the Maoris," says Lowie,<sup>3</sup> "the lot

<sup>1</sup> Post, *Bausteine für eine allgemeine Rechtswissenschaft*, Vol. II, Sect. 117.

<sup>2</sup> Letourneau, *Sociology*.

<sup>3</sup> Lowie, *Primitive Society*, ch. XII.

of the slaves recruited from capture in war was not one of material degradation, and owing to the superstitious dread of certain indispensable tasks defiling persons of quality the slave's estate really formed one of the pillars of the Maori State." It is so among the Indians of the North West Coast of America and among the Negro tribes of Africa. All the great peoples of history—the Egyptians, the Assyrians, the Chinese, the Medes, the Persians, the Mexicans, the Peruvians, the Muslims—have called this institution to their aid. Nor were war and conquest the only origin of slavery. As slavery was found to be a humane substitute for public war, it was found to be a profitable substitute for private revenge. Primitive man found that instead of killing your enemy, it was more profitable, though not as revengeful, to make him work for you for the rest of his natural life. According to Yajnavalkya in India, a man could repay his debt to his creditor by hard work. Similarly the primitive creditor made a useful discovery when he got his debtor to work for him if he would not repay his debt, as in ancient Gaul, Russia, France, and Germany of the early Middle Ages. Hunger was a frequent origin of slavery in Rajputana.<sup>1</sup> In those primitive times prison houses for criminals were out of the question—the tribes had neither the wherewithal nor the organization to keep them. Slavery was the primitive house of correction.

#### THE DISCIPLINE OF SLAVERY

It is exactly as a house of correction that slavery played its part in the progress of mankind. It may not be fanciful to assert that slavery at the time it existed saved great masses of the human race from extinction. It not only saved the lives of people, it trained them for a better life. It passed these wild, lawless, indomitable tribes through the crucible of a stern discipline. It taught them the preliminary art of obedience before they could be fitted for the larger life of freedom. Slavery taught free and easy savages and nomads the advan-

<sup>1</sup> Post, *Bausteine*, etc., Sect. 117.



tages of discipline and government. Free men learnt to govern themselves, as in Greece and Rome, by first governing slaves. Slavery was the whipping-stool of free government. Slavery was a step forward in civilization, for it introduced people to the principle of the division of labour. It trained them in the ways of work and service. It is all very well for us, with all the refinement and humanizing work that religion, civilization and culture have done for us, to condemn and execrate slavery and to desire to banish it from the earth. We can afford to do so, for we have other institutions, and slavery has already done its work of civilizing and bending peoples to the yoke of civil life. But these primitive peoples, with little religion and with no civilization and no culture, may well be pardoned for resorting to this rough and ready means of training men in the ways of peace and government. And it must be said in extenuation of the slave-holding peoples that slavery remained largely on account of the economic backwardness of the people. It is only industry that leads to accumulation of capital and the endowment of leisure; if there must be a leisured class among a generally agricultural people some form of slavery seems to be inevitable. It was with the rise of trade and industry and the free town that serfdom disappeared from mediaeval Europe.

## THE SERVICE OF SLAVERY

This view of slavery must not be taken to suggest that slavery was inevitable or necessary. We must take institutions as they have been and estimate their service to mankind. What else might have been is a vain question. It may be that it might have been better if the world of slavery had not been. But knowing man as he has behaved in history, his addiction to private revenge, the cannibalism of some tribes, the razzias of others, the mountains of skulls raised by a Tamerlane, the awful cruelty of the Assyrian, the human sacrifices of the Mexican, knowing as we do, in short, man's inhumanity to man, we may conclude that it might have been worse for man and society

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if slavery had not been. But this is not to say that slavery was or is a necessary or permanent institution. It is when slavery is not taken as a fact of history, but raised to a theory of politics, as was done by Aristotle and Calhoun, that it becomes execrable.

### THE GREEK THEORY OF SLAVERY

The theory that some men are intended by nature for all time to be slaves and that some men are born to be free is untrue to the facts of individual and historical experience. There are few peoples as there are few individuals who with the proper upbringing and discipline are incapable of freedom, just as there are peoples and individuals who by their folly and neglect lose the freedom into which they were born. Aristotle's theory of the natural and inevitable slavery of barbarians was only the wish that was father to the thought. He wished slavery to exist that Greek citizens may have the leisure and energy to devote themselves to the cultivation of arts and letters and politics. If Greeks are to be civilized, other peoples must be slaves and toil and spin for them, the lords of creation. Aristotle's theory of slavery was typically and exclusively Greek. It held out no hopes for man. And even for the Greek it was not a blessing. Greek citizenship, on account of its theory of slavery, was so restricted that it could never create the defences that might have beaten back Macedon and Rome. The smallness of the Greek city-State must in part be attributed to its system of slavery. Slavery prevented that rise of ranks and classes, that many-limbed society, which proves the superior and more developed organization. Slavery prevented the rise of that middle class which has contributed so much to modern political and social progress.

### THE ROMAN THEORY

Not with the Greek theory of slavery lay the hope of the world. It was rather with the Roman idea that slavery is only a temporary condition, that slaves should and could be made

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capable of citizenship that the hopes of humanity lay. By means of the practice of *peculium*, by emancipation conditional or absolute, by their treatment of slaves as a family institution, the Romans made slavery a genial school of political and social discipline. The superior political capacity of the Romans is proved by nothing so much as by their treatment of slaves and their attitude to slavery. And when Christianity came to preach the equality of man and established a discipline for man's will and character, the death-knell of slavery was rung. With the coming of Roman principles of government and imperial organization and of the Christian discipline, the need for slavery had gone. And its going became only a matter of time.

## RANKS AND CLASSES

Together with the institution of Slavery there went also a division of primitive society into ranks and classes, which if not created by slavery was in a great measure accentuated by it. The division of society into ranks and classes is as natural as it is ancient. The formation of classes, says De Candolle,<sup>1</sup> is altogether peculiar to the human species and nothing of the kind exists outside it. The American ethnologist Morgan's conception of an atomistic primitive society was a mere projection of modern American individualism into ancient society. It is controverted by all the facts of primitive and ancient history. The modern disgust with the anti-social behaviour of certain classes and a reaction from the complexity of the social organization of modern times had driven a certain school of ethnology to attribute a false simplicity to primitive organization. But social divisions are found everywhere in savage society. "Primitive man," says Lowie,<sup>2</sup> "is no imbecile, he is quick to perceive and to appraise those individual differences, which, as an inevitable biological phenomenon, mark every group, even the lowest. Primitive man knows that X, though a dullard at spinning a yarn, is a crack shot with bow

<sup>1</sup> *Histoire des sciences et des savants*.

<sup>2</sup> Lowie, *Primitive Society*, ch. XII.

and arrow; that Y, for all his eloquence in the council, has proved a poltroon in the sight of the enemy; that Z is an amiable all-round mediocrity. Imperceptibly he grades them." The principle of primitive classification was not one, but many. Physical powers as among the Crow Indians, wealth as among the northern Maidu or the Shastas on the Banks Islands, or birth as among the Maoris, the Samoans, the Natchéz Indians, formed the dividing-line. Division into nobles and commoners, freemen and serfs or slaves, into classes based on occupations and professions, was not the product of civilization, as Rousseau thought, but is as ancient as society itself. Primitive society, as we have more than once insisted, is a community of groups, rather than of heaps of atomic individuals. That is the way society was formed. And it is in this formation that society has marched. Whatever may be the degree of civilization and culture, whatever may be the form of government, the institution of ranks and classes persists through history. It is found in modern democracies like France and the United States of America, as in ancient tribal democracies like those of the Indians of North America.

This division into ranks and classes is not only a manifestation of the group idea which is characteristic of human society, but it seems to be the means by which society was organized for work and activity. It was through the division into ranks and classes that people learnt the arts of ruling and obeying. It was through this division that primitive peoples were taught the virtue of subordination and the practice of authority without which society could never have done its work nor even subsisted. For the division into ranks and classes meant a hierarchical organization. It meant a division into upper and lower classes. It meant that some classes led and others followed. Whether the division was based on birth or merit, the subordination of some classes to the rule of others was a necessary concomitant of social life. Happy the society in which the followers by merit or service could become leaders in course of time. But whether that was so or not, it was through

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a hierarchical organization of ranks and classes that primitive society was disciplined for political life. The warning of Shakespeare—

“Take but degree away, untune that string,  
And hark, what discord follows! each thing meets  
In mere oppugnancy:”

is proved not positively but negatively by the fact that no social organization has got on without gradation of ranks and classes.

## CASTE

Of all the hierarchies of ranks and classes there is one which claims special notice, for it is unique alike for underlying idea as for actual form. Others have been based on the universal desire to classify men according to their qualities and their work; but this hierarchy is based upon a peculiar idea native to one country in the world. This peculiar and unique hierarchy is that of Caste. Of the writings on Caste there is no end, and by now have become a weariness to the flesh. For many and different are the views of scholars regarding its origin and historical service and of statesmen regarding its present utility. Some attribute its origin to difference of colour, a white conquering race imposing its rule upon darker-skinned peoples for their better government and with a view to organizing conquerors and conquered into a well-knit society. This view is embodied not only in the Portuguese-derived word Caste but in the Hindu description Varnashrama Dharma. Others think that it arose, like ranks and classes all over the world, in differences created by work and occupation. But whatever the origin, there is little doubt that Caste as we see it at work in history is unique as an institution of social organization.

## INDIA, THE HOME OF CASTE

We see it at work in all its characteristic ways in India. Other countries have had organizations corresponding to Caste in India. Egypt and Persia are said to have had castes, and

Lowie,<sup>1</sup> speaks of caste in the islands of Polynesia, among the tribes of Africa and the Indians of North America. These so-called castes were no doubt classes whose status was determined by birth and was derived from heredity. The resemblance of Egyptian caste to Indian caste is especially remarkable. The divisions were about the same. The priests in Egypt were the dominant order. They were the depositories of knowledge. They possessed the most and the best of the land. The high priests were the equals of the Pharaohs. Through ritual, oracle and astrology, the priests held the ruling caste of warriors in their grip. The lower castes, generally descendants of the terrible nomads like the Hyksoi (2000-1500 B.C.), of whom the Egyptians always had a superstitious horror, were treated as impure and untouchable scum, fit only to tend pigs and worthy of exclusion from the temples. But the results and operation of Caste in Egypt and in India were different. In Egypt the domination of the priestly caste had been overthrown and the secular rule of the Pharaohs had become supreme when Egypt entered about 5000 B.C. the stage of history, but in India the Brahmins never lost their proud eminence in society and their influence on government through all the vicissitudes of Indian history. In Egypt an attempt was made to restore priestly rule, but while Sethos, he who, according to legend,<sup>2</sup> was saved from the Assyrian Sennacherib by a host of field-mice (about 700 B.C.), failed to restore his order to supremacy and has been handed down as a usurper in Egyptian history, Parasurama, or the series of movements which his legend represents, succeeded in restoring the power of the Brahmins in Hindu society and government. Egyptian castes were in their origin and in their course occupational. A man belonged to this or that caste because he was a shepherd or a fisherman or a cultivator of land; he did not cultivate land or fish or graze cattle because he was born in a particular caste. Castes in Egypt were no doubt hereditary, but there were no insuperable obstacles to a man

<sup>1</sup> *Primitive Society*, ch. XII.

<sup>2</sup> Herodotus, Bk. II, ch. 141.

belonging by birth to one caste changing it when he changed his traditional occupation. Neither in Egypt nor in any other part of the world where hereditary classes have existed has there been a bar sinister and impassable to members of one class becoming enrolled in another. Only superficial observation can confound Caste in India with caste elsewhere.

## CLASS AND CASTE

Another common sociological error is to confound Class with Caste. It is not uncommon for apologists for this institution whose views are based on political motives rather than on historical learning to say that castes have operated elsewhere, and need not be a bar to progress in India as they have not been a bar to progress elsewhere. But Class is not caste. Class is fluid, whereas caste is rigid. Class changes, whereas caste is permanent. Classes are interchangeable, while castes are water-tight compartments. Class, ever changing, ever capable of adaptation and adjustment to environment, is the sign and the result of progress. Caste, permanent and unchangeable, is the mark and the cause of stagnation. The fact is, class is made by man, while caste is made by something outside and above man. Class is made by events; caste is made by one event, birth, which no man can help or change. As Farrar J. in *Raghunath v. Janardhan* put it, "Caste is a racial combination, the members of which are enlisted by birth, not by enrolment."<sup>1</sup> Class is determined by social needs; caste is founded on a religious dogma. It is religious doctrine that makes Caste what it is, unchangeable and eternal. It is the doctrine of Karma, as we have seen already, that is the inspiration, if not the foundation, of Caste. It is the creed that one's social rank or status in the world is determined by the record of one's past life or lives, and that in that rank or position or caste, as we should call it, one is only working out the consequences of the deeds of past life, that is the idea of Caste. It is this religious doctrine

<sup>1</sup> 15 Bombay, 559, quoted in Mulla, *Jurisdiction of Courts in matters of Caste*.



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that makes Caste so rigid and unalterable. If one is working out one's karma, or the consequences of his deeds in a past life, it would be flying in the face of Providence to leave that station to which one has been called by his birth. Caste therefore becomes a religious institution based on a religious belief. It will stand as long as that religious belief stands.

### CASTE, THE INSTITUTION OF INDIA

The part played by Caste in the organization of Indian society and polity is an oft-told tale. But there are certain aspects of it that deserve to be emphasized. It is generally assumed that Caste is only one of the social institutions of India. But as a matter of fact it is its only social institution. It dominates the social organization of Hindu India. It is not merely the dominant institution, but it is the one institution from which all other institutions derive their strength and very existence. Marriage, property, industry, trade, the State are all dominated by Caste in Hindu India. His caste is his country, said a French missionary of the Hindu of Madura in the seventeenth century.<sup>1</sup> Religion itself is under the influence of Caste. What is the differentia of Hinduism? It is not religious doctrine, for a Hindu may profess any kind of religious belief, from atheism, of which there is an orthodox school of philosophy, the Nyāya, to pure theism, by way of pantheism and polytheism. A Hindu loses his religion when he loses his caste. The confusion of castes, according to Manu, is the confusion of the world, the supreme social evil which all good Hindu kings must prevent.

### INFLUENCE OF CASTE

And if religion comes under the dominion of Caste, it is not to be wondered at that social institutions also have been under its sway. A true Hindu marriage, according to Hindu orthodoxy, is only a caste marriage, that is a marriage between members of the same caste. All the rights and obligations that marriage creates, the right of a father over his children, the

<sup>1</sup> Quoted in Nelson's *Madura*, Part II, p. 3.

rights of succession and inheritance, all issue only from a caste marriage. A marriage outside one's caste is outside the law, and according to strict Hindu orthodoxy mere concubinage. It is only British law that, by special enactments passed, or by the judicial legislation of social reformers sitting in the courts of British India, not without opposition from Hindu orthodoxy, that has legalized such marriages. The property of a Hindu can never by strict Hindu law be inherited by members outside his caste: It could never be willed by him to whomsoever he pleases.

## CASTE AND INDIAN LIFE

Man's manner of life was settled for him by his Caste. Man's industry was settled for him by his birth. Not his individual capacity and inclination, but the caste in which he was born determined the manner in which he should earn his bread. It is true that members of the higher castes have been allowed to follow any profession in certain circumstances. The law books, including the Code of Manu, allow Brahmins to be soldiers, shepherds and shop-keepers, and Brahmins in the modern Kali Yuga, to their profit and the service of the State, have been engineers, doctors and captains of industry. But the law books did not provide for the Sudra or the Chandala performing the functions of priest or teacher or administrator. The very government of Hindu India has been determined by Caste. The ruling classes belonged to the Brahmin and Khsatriya castes. It is true that Sudras have carved out States like the Nandas and Mauryas of ancient India, like Shivaji of the Mahrattas and the Naiks of Madura. But sooner or later they have come under the sway of Brahmins, like the successors of Shivaji under the Peshwas. The village, which has been the elementary unit and for a long time the only unit of Indian polity, is a community of castes. The casteless people were outside the pale of village society. The out-caste meant very nearly an outlaw. The whole life of India, private and public, social and political, has been dominated by Caste. For good or for ill,

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Caste has made India what it was and is. It is through Caste that we must explain the course of Indian history, the fortunes as well as the misfortunes of the people.

### THE EVIL OF CASTE—DIVISION, AN INSTITUTION

Not without good reason are India's social and political misfortunes attributed to Caste. Its greatest disservice to the country is that it has raised disunion and division into an institution. It has made the spirit of division a part of the mental and social constitution of the people of India. Class also means division, but it does not mean division to the point of disunion. Caste, on the other hand, divides to the point of disunion. The fluidity, changeability and the adaptability of Class to circumstances allow it to overcome the consequences of the inevitable division and help man to remember the ultimate unity of the society to which he belongs. When a man can pass even with difficulty from one class to another, he feels that these classes are only parts of a larger whole. Caste, on the other hand, prevents a man from passing from one class to another, and he is forced to look upon his caste as a society in itself and upon other castes as other independent societies. Although castes are part of Hindu society, they do not inform and influence each other. Each caste is a law and has a law unto itself. People in India have always had their disputes decided in courts of law by the customs of their caste. The essential idea of caste is division, and as the division into caste is permanent and unchangeable, Caste creates permanent and perfect division.

Caste is no doubt prolific of new groups, for new castes are formed every now and then in India. They have arisen as new needs and circumstances called for them. The writer castes for instance—the Kayasths of northern India, the Prabhus of the Dekkan, the Karnams of South India, were called into existence by the needs of administration, especially under the foreign rule of the Muslims.<sup>1</sup> Nor are castes maintained in all their rigidity as foreign observers may be led to believe. The Ahirs,

<sup>1</sup> See Baine's *Ethnography*.

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for instance, of the Punjab, originally a cattle-breeding class, are now becoming agricultural. But far from adding to the richness and variety of social life, as Class does in the rest of the world, Caste only creates more examples and illustrations of division. The Satanis, e.g., a caste recruited from various castes, while professing anti-caste principles, have themselves hardened into a caste.<sup>1</sup> Caste does not, like Class, gather these new groups from time to time and take them and throw them on the ground to form still more new groups, in which process of movement and shaking up men are made to realize that they belong to one another and to a common society. Caste is a bar to that *carrière ouverte aux talents*, which has in all periods been the redemption of European society. How much, for instance, India has lost by its nobility being a nobility of birth and not of service is proved by the career of aristocracy in Europe. Nobility in Europe was made from time to time by the people through its representative the king, and not by an unchangeable law. That is why western aristocracy has been a live institution, while Indian nobility has been a dead weight.

### CASTE FORMS MECHANICAL MOULDS

While Class is a living force, Caste is a mechanical frame of society. It divides up society into so many rigid forms or moulds of clay, having no connection with each other. Caste has been lauded by some defenders as the institution that has kept Hindu society permanent through all the ups and downs of Indian history. But the permanence is the permanence of dead matter. Hindu society, under the influence of Caste, is like the Greek orthodox Church, which, according to a saying of De Maistre, only holds together because it is frozen solid.

### CASTE, A BAR TO PROGRESS

Caste has no principle of life or movement, for it has not the principle of unity. Caste is the main reason, next to the philosophy of life of the people, which has made Hindu society so

<sup>1</sup> *Corinbatore District Manual*, by Nicholson.

stationary. Caste is a group held together by ties of kindred relationship, and to project this institution into a State based upon territorial and local bonds of union and connection and patriotism is at once a chronological and sociological error. Caste and progress are opposed to each other. Caste no doubt stands for certain good things which are necessary in the organization of society. It stands for routine and stability, but it advances life only along a certain groove and up to a certain grade. It puts life into mechanical moulds. Its marriage inhibitions, although they may have preserved the racial purity of certain classes, have been a bar sinister to the physical improvement of the Hindus. Adventure, enterprise, the spirit of the pioneer, are alien to it. Foreign travel and access to new ideas it taboos. Foreign peoples with their gifts of new vitality and strength and of new ideas and institutions cannot be incorporated into its society. Alien peoples were no doubt incorporated from time to time into Indian society, like the Huns, the Scythians and Greeks in northern India and like the jungle and aboriginal tribes of the interior more recently. But they had to pay the price of absorption into a caste of Hindu society. Caste has been pliable and adaptable to a certain extent. The Brahmins have freely and frequently admitted tribal chiefs into the brotherhood of the Kshatriyas. In 1720 it is recorded a chief of one of the Kukei tribes of Assam was persuaded by some Brahmins at his court that he and his subjects were Kshatriya of the Lunar race, whereupon the monarch embraced their creed and was invested with the sacred thread, and with him a large number of his people.<sup>1</sup> But the admission of these savage and semi-savage peoples into the Caste system, although it raised their level of civilization and culture, did not raise the level of Hindu society.

#### CASTE, THE BAR TO INDIAN UNITY

Caste, with its spirit of division raised to the prestige of an institution, accounts for the historical incapacity of India to

<sup>1</sup> Baine's *Ethnography of Castes and Tribes*.

form itself into one large united State, as well as for the arrested civilization and culture of Hindu India. Caste has crossed and neutralized institutions which among other peoples have contributed to their social or political progress. Exogamy, which seems to have been invented by primitive peoples to promote human fertility, is here in India crossed by Caste, and men, although they must marry outside their gotra, must marry within their own caste. Similarly, Indian feudalism has been crossed by Caste, and the pettiness and futility of the Rajput States are thus accounted for. Political leadership, which has done much for the consolidation and expansion of the State, and which the tribal chieftain was able to obtain elsewhere, has here been weakened by the sway of the Brahmins. The genius of India has thus been locked up in the prison-house of Caste. It is a wonderful thing that that genius achieved the things it did in literature, philosophy and the arts. But what India would have achieved if Caste had not been its dominant social institution, we can realize from the measure of freedom and progress that have been achieved and are being achieved by the peoples that have not come under its influence.

## THE SERVICES OF CASTE

This judgment of Caste, drawing as it does a picture of unrelieved gloom, would, however true to facts, not be able to explain why Caste has held India in its grip for so many centuries. One reason for its long and continued existence has already been given, namely, its foundation on a religious doctrine, which shows no signs of relaxing its grip upon the people of India. But a religious idea by itself cannot fasten an institution upon a people with such deadly cohesion, and a religious doctrine may have more than one institutional manifestation, and there is enough pain and suffering in the world for the justification of the doctrine of Karma, if justification were indeed needed. The persistence of Caste through the centuries of Indian history is to be explained not only by the religious belief which is its basis, but by the social service it

rendered to Indian society. An institution which has lived so long must have rendered some notable service to the society for which it was intended. As a matter of fact, Caste did render such notable service to the country of its origin.

CASTE, THE BUILDER OF INDIAN SOCIETY

For one thing it consolidated and integrated ancient Indian society within certain limits. It united the Aryan conquerors and the conquered tribes of aboriginal India in a common polity in which each was given a place according to its fortunes. It caught the fluid aboriginal tribes of India and solidified them into crystals, rigid, no doubt, but fixed and stable. It captured the wandering and flying particles of aboriginal society and congealed them into moulds which gave them form and shape. It gave ancient India an organization which preserved its life and harnessed its activities. It gave those primitive tribes, whether of conquerors or of conquered, the social discipline they required. Caste trained them in the ways of obedience and subordination. It gave ancient Indian society the hierarchical constitution which every society requires. When harsh things are said of Caste, as they rightly may be said, let it be remembered that Caste dispensed with slavery as a means of social education and saved India from the horrible experiences which other people have waded through. If the swish of the slave-driver's whip does not haunt the memory of man in India, it is to Caste that he must hold himself indebted. Nor can it be accounted unrighteousness that it placed at the head of society to act as its guide and leader a spiritual class, bereft of physical force and commanding obedience and deference only by its claims to superior knowledge and superior morality and renunciation and sacrifice. Caste therefore did for the organization of society to a certain limited extent the work that ranks and classes have done elsewhere. It vindicated the claims of Society against the State, only its society was unfortunately one built on birth and not on the free activity of man.



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### THE VICE OF CASTE

In spite of all the great and good work that Caste did for ancient India, the value of that service was vitiated by the one essential defect from which the whole system suffered. The division and hierarchical organization of Caste was based on birth. And therefore it could not serve the cause of freedom and of progress. It is good that a society should be grouped in clearly divided classes which perform particular social functions without intruding upon and preventing the work of each other. It is good that social functions should become specialized and that different services are allotted to different groups. But why should these groups and divisions be determined by birth? Why should a man who felt he had the making of a soldier in him be doomed to chant mantras or act the purohit? Why should the love of adventure which fills the soul of a Kshatriya find expression only on the battlefield and not in enterprises of great pith and moment in commerce and industry?

Caste was not a thoroughly evil thing. It stood for some good things necessary for life and society as stability, routine and specialization. It bore also some germs of progress, for castes have grown in number beyond the original four of the codes and the law books. Castes no doubt are always in process of formation. Any new occupation gives birth to a caste. The formation of these new groups, which in other circumstances would be a sign of progress, did not serve the cause of progress in India. For each of these castes forms into a closed-up group repudiating marriage and all social contact with other groups. Once formed, the new caste is petrified by the influence of birth and heredity. It becomes one more of the numerous iron and rigid moulds into which Hindu society is divided without adding anything to its vitality and progress. There is no doubt there has been progress in Hindu India, in spite of Caste. The imperious needs of life will sometimes override the influence of institutions. There have been Brah-

min regiments of soldiers and *laukik* Brahmins enter almost all the professions and occupations of modern times. But as was pointed out earlier, members of the lower castes cannot perform some of the functions of the higher castes, and caste still acts as a social taboo especially in regard to marriage. When marriages are impossible between members of different communities, it is difficult for them to believe that they belong to one common society. In countries where Caste does not exist, marriages between classes are not impossible, though they are not frequent. Caste with its marriage and other taboos is a bar to that mixing up of groups and classes which is necessary for the unification of society. These marriage and social taboos make it highly difficult for the Hindu to live and practise from day to day that social unity and solidarity with all classes which is necessary for the progress of the country.

#### CASTE PREVENTS THE RISE OF SAP

These taboos of Caste prevent that rise of sap from below which is the nutriment of social as of plant life. The experience of western history shows that society cannot trust its fortunes for ever into the hands of one particular class. Degeneracy is a danger that especially attacks the higher class whom their good fortune allows to live a life of luxurious ease. And unless these higher classes are able to rely on a continuous draft of recruits from other classes to whom grit and hard work are the only passports to success, these higher classes must resign all claims to leadership. It is this rise of sap from below that keeps the governing classes in the West up to the level of their vocation. And it is because Caste does not allow this rise of sap that it must be counted as a danger to Hindu society. Whatever social progress there has been in modern times has been in spite of Caste. But the progress that is achieved in spite of a national institution is bound to be petty and futile and difficult.

## CASTE UNNECESSARY WHEN OTHER INSTITUTIONS ARE AVAILABLE

Caste has done great and memorable service to Hindu India, but it has exhausted all its possibility of good. It has survived its usefulness. It has now come to be one of those ill customs which according to Montaigne the people of Crete when they would curse anyone they prayed the gods to engage him in. It was necessary when it had to do the work of social morality, government and public opinion. But as Hindu society finds for itself new methods and institutions of organization inspired by the social ideals of freedom and progress, the need for the continued existence of Caste will disappear. When new restraints and guides of society begin to act on a large scale and to an enlightened degree, when and as new groups based upon work and service and vocation are formed, Caste need not stand upon the order of its going. And the sooner Caste is replaced by some better form of social organization, the better for Hindu India and the surer will be the social progress of the country.

## PROPERTY—THEORIES OF ITS ORIGIN

All the institutions that we have dealt with so far, the Family, Adoption, Slavery, Ranks and Classes, are concerned with the organization of one of the elements that go to make a State, viz., the people. But land, as we have seen, is the other element, which is just as important in the making of the State. Of the institutions that have been instrumental in making land serve the organization of the State, the greatest is Property. The question whether property in land or property in movables came first must receive the same answer as allied questions in regard to the origin of other social institutions have received. Among nomadic peoples who took some time to settle on land, property in cattle and other movable things like arms, tents and curtains came first. Among other people whom we find settled on land from the beginning, property in land was contemporaneous with property in other things. The other question regarding the origin of property, whether property was origin-

ally individual or communal, also receives a like answer. We may agree with Maine,<sup>1</sup> that the collective ownership of the soil by groups of men either in fact united by blood-relationship or believing or assuming that they are so united, is now entitled to rank as an ascertained primitive phenomenon. In some ancient societies, like that of the ancient Peruvians, the ancient Mexicans, among primitive peoples like the Veddahs of Ceylon, the Ossetes of the Caucasus, the Alaskans and Greenlanders,<sup>2</sup> a number of Australian aboriginal tribes, among the Russians and other Slavonic peoples in the form of the Zadruga, as well as among American Indian communities, communal ownership existed at first. Among other peoples individual ownership prevailed, as among the Torres Straits Islanders, the Marshal Islanders, the Samoans, the Khands of Orissa, while communism and individualism exist side by side among the Kirghiz. It would seem as if the Kossians or Kassites, who appeared on the stage of history about 1400 B.C. and stayed for a period of about 400 years in Chaldea, were the first to observe the principle of individual property in land, pure and simple.<sup>3</sup> Collective proprietorship, periodical divisions and temporary usufruct had been the rule among the ancient Egyptians and Babylonians and Hindus at the time of Alexander's invasion, and prevail to-day among the Yusufzais of Afghanistan and the Karens of Burma. The Jamaliats of Bokhara and the Mirs of Russia were village communities that resorted to periodical division of land among their members.

#### VARIETIES OF PROPERTY

Kinds and modes of property holding, it would therefore appear, vary with forms of society. Most nomadic peoples, on account of the manner of their life, stick to communal or family ownership in pasture-land, as in New Holland and among the Brazilian Indians<sup>4</sup> and Central Asiatic tribes, while indi-

<sup>1</sup> Maine, *Early History of Institutions*, Lecture I.

<sup>2</sup> Post, *Die Anfänge des Staats und Rechtslebens*, Bk. III.

<sup>3</sup> De Morgan, *Les premières civilisations*, p. 312.

<sup>4</sup> Post, *Bausteine*, etc., Vol. II, Sect. 137.

vidual ownership obtains in regard to cattle and movables. An agricultural people does not become progressive till it reaches individual ownership of land, especially, of the right to accumulate it into capital. One of the signs of agricultural progress is the large proportion of land held in individual proprietorship compared to that which belongs to the State. Non-agricultural occupations like seafaring among the Montenegrins<sup>1</sup> or travel among Serbs have led to the development of individual property. Among industrial and commercial peoples the tendency is to treat movable and immovable property alike, as among the Romans when they developed trade and commerce.

#### NATURALNESS OF PROPERTY

However that may be, property of some kind or other held in one way or the other existed from the beginning of human society. The instinct for property, we are told by a scientist,<sup>2</sup> is more alive among men than among animals. It is another of those primitive institutions that are established in answer to the needs and instincts of man. Property is ownership in the things one has made, either the cattle that one has caught or bred, or land that one has cleared and cultivated, or, as more frequently, what one has acquired as booty in war. As Ihering<sup>3</sup> pointed out, booty was the primitive form of Roman property and plunder its first source. It is one of the many ways in which human personality is realized. It is one of the expressions of man's activity. This, however, is the philosophical not the historical justification of property. The Occupancy theory of the origin of property is no longer tenable. Not individuals but kindred groups held property in primitive society. It is true that property at first, as Mr. MacIver<sup>4</sup> points out, was more a family than an individual concern, more valued for its material than moral value, and that the respect for personality is weak among primitive conditions. But property held by a

<sup>1</sup> Op. cit., Vol. II, Sect. 135.

<sup>2</sup> De Candolle, *Histoire des sciences et des savants*.

<sup>3</sup> *Geist des Römischen Rechts*, Vol. I, Sect. 10.

<sup>4</sup> MacIver, *The Modern State*.

family or a group in the course of time, through the influence of such forces as feudalism and industry and the development of individual personality, changed into property held by individuals. Philosophically, if not historically, property is defended as a realization of human personality. But the connection between property and personality is not so modern as Professor MacIver would make it. When land first escaped from communal ownership it was the tribal chief that first held the only piece of individual property, as among the ancient Irish and under feudalism.<sup>1</sup> Ihering has shown how in ancient Rome property and personality could be bartered for each other. The freedom of imprisoned debtors could be purchased, as is illustrated in the well-known story of Manlius in the fourth century B.C. freeing 400 debtors from the hands of their creditors.

## PROPERTY AS MAKER OF SOCIETY AND STATE

Property, if it is made by man, also makes man. In the act of acquiring property man develops and exercises his faculties and capacities. After acquiring a certain amount of it, he extends himself and founds a family. His social solidarity with his fellows is strengthened by his efforts to acquire it. The desire to transmit property to one's descendants, which is a primitive instinct, binds successive generations of men together. It probably arose as De Candolle suggests, out of the analogy of the hereditary transmission of one's physical and intellectual qualities to one's descendants. This transmission by succession lies at the very foundation of society, for it is at once an instinct and the sole condition of regular work. Through property man establishes contacts with his fellow-men, gives and takes, modifies and is modified by others in the process of making or acquiring it. Property, if it can exist only in society, also makes and develops it. Social life is strengthened and integrated by property. The nomadic Kirghiz, for instance, becomes more a member of society, when he owns a tent, a spear and a shield

<sup>1</sup> Post, *Bausteine*, etc., Vol. II, Sect. 143.

and a horse and a few head of cattle, for social life then becomes pleasant to him. He feels the beauty and the utility of the social instinct. Settlement of a tribe upon land means nothing for the development of society and State unless a tribe as a whole or families or individuals composing the tribe possess that land as their property. It is property in land, communal or individual, that makes a people strike roots in land. The formation of classes begins as soon as property becomes subject to succession. As the French proverb has it: *Qui se ressemble, s'assemble*.

Property made primitive society and State. While in the tribal condition property belonged to the whole tribe, it was with the rise of individual property that the State came into being. The chief of the tribe, who was the administrator of the tribal property held in common, was the first to be endowed with individual property, and the right percolated downwards. This privilege increased the power and prestige of the primitive chief and contributed to that strengthening of monarchy which marks everywhere the beginning of the State. Among many peoples the chief was chosen as much for his wealth as for his bravery, as among the Angami Nagas, the small kingdoms of the Gold Coast and the Turkomans.<sup>1</sup> Hereditary monarchy could not have come into existence without the private property of the king, nor parliamentary monarchy if the king had been rich enough to live of his own. Throughout history property has entered into the making of the State. The size of the State has been increased by the desire to increase the property of the State and its subjects, and the history of imperialism may well form a chapter in the history of property. Taxation, a way of treating property, fills a large place in the history of constitutional government. New forms of property, like the silver of Central and South America, the gold of Africa, the stocks and shares of modern times, have brought about changes in the form and constitution of the State. The more the forms, the more complex the forms that

<sup>1</sup> Post, *Bausteine*, etc., Vol. II, Sect. 121.



property takes, the more complex and the more highly organized also do society and the State become.

Nor is its utility to society and the State now exhausted. The desire for property can still make a man more social than he is by nature. The new forms of property, like shares, bank-notes, not to speak of money, have linked modern society still more closely than it was under the natural economy. But forms of property may change from time to time. Property, it has been said, is a concept, the content of which is to some degree shifting. Slaves are no longer property. Certain rights like house-franchise are considered to be property in Spanish America, while the United States of America have ceased to recognize them as such.<sup>1</sup> But whatever its form, property influences the society and the State in which it is found.

#### THE POLITICS OF PROPERTY

The political influence of property cannot be denied. The absolutism of Roman property, the *jus utendi et abutendi*, is part of the cause of the absolutism of the *imperium* of the Roman State, while the limited ownership, especially of land which prevailed among the Germans, partly accounts for the divided and limited sovereignty of the government of the States founded by them. Property still forms the basis and a *raison d'être* of modern government. The laws of property form one of the most important branches in every modern system of law. They govern largely the behaviour of classes and individuals towards each other. They may be the cause of social peace as of social unrest. The Pax Britannica in India is largely based on the feeling of the ryot or merchant that his property holding or his earning is secure to him under British rule. As long as the rulers of India remember Kautilya's<sup>2</sup> maxim, that acquisition and security of property are dependent upon peace and that freedom from disturbance to property constitutes peace, their rule will be secure. Property will always lie at the root

<sup>1</sup> Coudert, *Certainty and Justice*.

<sup>2</sup> *Arthashastra*, Bk. VI, ch. 2 (Shamasastry's trans.).

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of the State. Even the socialistic challenge to the modern State does not deny property, but only the morality and utility of the manner in which it is held at present. It may be possible to reconstruct society or the State without individual property, but it is difficult to contemplate any society or State existing without property at all.

### FEUDALISM

Of all the ways in which property has influenced the making of the State, there is one which has played a very notable part in history. Property in land has given rise to an institution which has filled a leading part in the organization of society in the large State. It is one of the most widespread of human institutions, and is found in States as far apart as England and Japan. This institution has been described by the name of Feudalism. Its origin was generally due to the conquest of a large country by a few people and their inability to rule it themselves. It was found that the land could be better ruled if it were divided up into parcels and each parcel handed to the governmental care of an individual. Maine<sup>1</sup> has shown the part played by the growth and transmutation of the sovereignty of the tribal chief, passed through the crucible of feudalism, in the development of modern sovereignty. In the tribal condition traces of feudalism are to be found in Polynesia, Tahiti, among the Lampongs and Buttoks of Sumatra and the Indians of North America. Feudalism has flourished almost everywhere wherever large States have been formed, in ancient Akkad and Elam, in Mexico, in Russia under the Varangians, in Egypt after the Mameluke conquest, and India and Japan. But it is in mediaeval Europe that feudalism flourished at the height of its greatest influence, and it is from mediaeval feudalism that its characteristic features have been deduced.

### THE IDEA OF FEUDALISM

Its fundamental idea was that government was based on

<sup>1</sup> *Early Institutions*, Lecture V.

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property in land, and political authority was divided up among a hierarchy of ranks and classes which were brought into direct relationship with the land. Political rights and duties were based on the possession of land which was under feudalism, the basis of government and social order. A man possessed political rights according to the extent of land and the degree of ownership which he possessed over it. A landless man was no freeman. There were many grades of possessing property in land. Man's political rights varied according to those grades. Property was not the absolute monopoly of a few as in ancient Rome, but was shared by the many. This dependence of political rights upon property justifies the characterization of feudalism as an institution under which public law was largely private right.

### FEUDALISM AS MAKER OF THE STATE

With these features, feudalism rendered invaluable service to the societies that put themselves under it. It was feudalism that made land, as Maine<sup>1</sup> puts it, the exclusive bond of union between men. It converted tribal into territorial sovereignty. Those two maxims of feudalism, No land without a lord; No lord without land, brought about the establishment of territorial sovereignty as one of the differentia of the State. It gave a structure and organization to the large country State. Feudalism fixed wandering peoples to the land. It gave the State its characteristic of territoriality. It made land the most important thing in the State, in fact the foundation and stuff of the State. It strengthened the basis of government by distributing government all over the State, by dispersing it towards the circumference instead of concentrating it at the centre. It gave a training in government and administration to all the people of a State by multiplying the centres of authority and government. It provided the training and discipline necessary for the formation of large tribal societies settling down into

<sup>1</sup> Maine, *Early Institutions*, Lecture III.

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statehood. Its hierarchical gradation of classes gave ancient society the nuts and bolts that fastened it together.

### ITS INTEGRATING INFLUENCE

Feudalism served not only the higher but the lower classes of society. All were brought under the aegis of its law. The king, the lord, the serf, all had varying degrees of right to the land which held them together and varying degrees of enjoyment of the political rights which this relationship to land conferred. The classes were bound together by bonds of personal loyalty. They swore fealty to each other. Feudalism furnishes the first instances of governments based on contract. Feudalism led the State from the world of status to that of contract. The famous reply of the Count of Périgord to Hugh Capet, "Who made you king?" to the latter's question "Who made you knight?" illustrates in clinching fashion the contractual basis of the political relationships of feudalism.

### FEUDALISM AND CONSTITUTIONAL GOVERNMENT

Its ideas of distributed and limited authority served the cause of constitutional government in mediaeval Europe. It scattered leaders of society all over the country. Feudalism articulated and knotted society in such a way that it was able to bear the shocks of great revolutions, as in mediaeval Europe or in modern Rajputana. To realize the political influence of feudalism we have only to compare the fortunes of western European States and Japan, where a confederation of chiefs in possession of land clustered round the central power, whether Mikado or Shogun, and where feudalism has integrated society without any help from the Mikado, the nominal head of the State, and furnished the country with a hierarchy of leadership through its 300 *daimios* and about 500,000 *samurais*, which has led Japan into progress and an organized and national statehood with those of Slavonic Europe, where feudalism was absent or only insufficiently developed, or with those of India where feudalism was crossed and modified by Caste, or in Rajput

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India, among the Rathors and the Sesodias, where it was still further modified by tribal ideas of kinship and blood-relationship<sup>1</sup> as the terms of the tenure of land, or with the fate of China, where feudalism was loosened by the power of a lettered bureaucracy and which, with all its racial and linguistic and cultural unity, has not been able to become a powerful State.

### FEUDALISM, OUT OF DATE

For all its great services feudalism was not perfect, nor was it meant to last for all time. Founded on land, it had no room for trade, commerce and industry. Towns were outside the feudal system. It was based on serfdom. Unmodified by other influences, it was an obstacle to the national unity of States, as in mediaeval Germany, and to their very independence, as in Poland. When the need for a strong central government was felt, when commerce and industry began to flourish, when towns grew in wealth and importance, the hour of the fall of feudalism had struck and it went. And no one regrets its going. But none may forget the great and invaluable services feudalism has rendered to the making of the modern State.

### THE TABOO

There are other institutions, like the Totem and the Taboo and Exogamy, which have played a minor part in the social and moral education of some peoples. The Taboo was a kind of moral code embodied in a visible concrete form easily comprehended by primitive tribes. When food became scarce, a taboo was placed upon bananas or pigs or hens. Sacred things like idols and burial-grounds were placed on the taboo. Taboo acted as the law and police of primitive tribes. In Timor, in the Malay Archipelago, to protect gardens from thieves, it is considered sufficient if a few palm leaves, suitably arranged, are hoisted and placed under a taboo. It served as a means of moral discipline, as when individuals were tabooed from

<sup>1</sup> For a critical review of Todd, who invented European feudalism for the Rajputs, see Lyall, *Asiatic Studies*, First Series, ch. VII.

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leaving a house for a certain number of days, lighting any fire, or eating after the rising or setting of the sun. It was also a sign of liberty, as in New Zealand, where the heads and backs of freemen were tabooed and thus saved from carrying burdens.

### THE TOTEM

Another institution that played a great part among a few primitive peoples was the Totem. Totemism has been described by its historian as "an internal relation which is supposed to exist between a group of kindred people on the one side and a species of natural or artificial objects on the other side, which objects are called the totems of the human groups,"<sup>1</sup> the relationship between a man and his totem being one of friendship and kinship. The Totem is found among many of the Australian aborigines and in East and Central Africa and in North and South America. In India it is found among the wild hill tribes of Dravidian stock, the Bhils of the Vindhya and Satpura mountain jungles, the majority of whose totems are trees or plants, and in some cases the cat or the peacock, as among the Khangars of Bundelkhand, the Boyas, the Kalingis, the Balijas, of the Telugu country. Totemism played a memorable part in the social education of large sections of the human race. Totemism induced a respect, a superstitious respect for things and persons that deserve respect, like clans, women and animals. Regard for human life, for ancestors, as among the Oraons of Chota Nagpore, reverence towards sex, a concern for useful animals and plants, were the salutary service rendered to primitive society by the institution of totemism. Savage society owes not a little of its peaceful life and social solidarity to totemism. In Sir James Frazer's opinion totemism has done much to strengthen the social ties and thereby serve the cause of civilization, which depends for its progress on the cordial co-operation of men in society, on their mutual trust and goodwill and on their readiness to subordinate their personal interest to the interests of the community,<sup>2</sup> "for the

<sup>1</sup> Frazer, *Totemism and Exogamy*.

<sup>2</sup> *Ibid.*, Vol. I, p. 38.

persons who have the same totem regard each other as kinsmen and are ready to befriend and stand by one another in difficulty and danger," as illustrated in the blood-feud and the custom of collective responsibility for crime which were a consequence of the tie of the totem. How much the principle of collective responsibility and vicarious suffering and punishment that go with it have done for primitive society by consolidating and holding it together is proved by the very survival of society.

#### EXOGENY

Exogamy, the practice which "obliges a man to marry a woman of a different clan from his own," also served to extend the bounds of social relationship and did work for society in the State similar to that which was performed by the institution of Adoption. Exogamy is widespread in savagedom among most of the Australian aborigines in Melanesia, in North America, the Negro and Bantu tribes in Africa, in India among the Kasis and the Garos of Assam, the Mundas and Oraons and Santals, the Bhils divided into forty or fifty clans, the Khangars and Arakhs of Bundelkhand, the Korkus and Gonds of the Central Provinces, the Gollas, the pastoral tribes of the Telugu country, the Kapus or Reddies, the Komatis, the Maravars of the Tamil country, the Todas and other Dravidian tribes before they were hinduized, among the Aryan Hindus, or rather among the Dravidianized Aryans, if, according to Frazer, Exogamy is unknown to Aryans. But unfortunately here the healthy practice of Exogamy was considerably neutralized by the rule of Caste. This restrictive influence of Caste is illustrated in the case of those Gonds who have adopted Hindu customs and settled in the plains, renouncing social intercourse with their brethren in the jungle.<sup>1</sup> We need not speculate on the origins of Exogamy, for Sir J. G. Frazer has done that for us in his voluminous fashion.<sup>2</sup> We are concerned more with its effects on society and the

<sup>1</sup> Baines, *Ethnography of Castes and Tribes*.

<sup>2</sup> Frazer, *Totemism and Exogamy*, 4 vols.



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State. Like the Christian laws of consanguinity and of prohibited degrees in regard to marriage, Exogamy facilitated the expansion of the society that adopted it. It drew primitive society out of its pettiness in size and outlook. It has also contributed to the health of people. It has prevented that in-breeding and consequent infertility which is the curse of endogamous societies. Exogamy is a kind of scientific breeding. The conclusion of Sir James Frazer "that the races which practise exogamy or prohibit incest have been vastly more numerous than the races which practise endogamy and permit incest" is well supported by historical and contemporary observation.

### INSTITUTIONS NECESSARY

This survey of the work of institutions shows how necessary they were in the organization of society. Institutions seem to be the means by which the ideas of man are realized. Ideas, however excellent and true, seem to be in the air and up in the clouds till they are brought down and embodied in institutions. The institutions of the family and of marriage realized man's idea and instinct of social union. The institution of property is one form of the expression of human personality and at the same time secures and preserves it. Most of the institutions of man, while they express man's ideas and instincts, at the same time preserve and perpetuate them. Ihering<sup>1</sup> has shown in Roman history the intimate connection between form and liberty, how in the hey-day of Roman liberty institutions were numerous and predominant, how the decline and fall of political liberty coincided with the diminution of institutions, till at last there was only one institution, the Roman emperor facing an empire of slaves.

### FORM NECESSARY FOR IDEAS

The formalism of law is at once a necessity and an advantage. Formalism, in ancient law especially, is the language, the symbol,

<sup>1</sup> Ihering, *Geist des Römischen Rechts*, Vol. III, Sect. 46.

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the sensible, visible and picturesque expression of primitive ideas. To children and savages it is forms that convey a meaning of the ideas that are placed before them. Forms and institutions are the plastic expression of ideas. Primitive magic, symbols, rituals, which to us seem so meaningless and have aroused the ironic criticism of men like Sir James Frazer, are nothing else but the protective discipline of primitive society. They correspond to the rules and modes of modern social life by which we are as much bound as the savages of primitive society by their formalism. There is no better way of saving an idea for the world than to enshrine it in an institution.

### INSTITUTIONS AS MAKERS OF THE STATE

How much institutions can serve the cause of a people is proved not only by the progress of those peoples that have built up life-giving institutions for themselves, but especially by the fate of those who have tried to get on without them. The classic instance of such people is that of the Jews. There were institutions among the Jews, to start with, a priesthood, a monarchy and assemblies, but none of them were developed to their full capacity. Far from developing, says Sudre,<sup>1</sup> the germs of the institutions created by Moses perished in the anarchy of the republican period. The incapacity of the Jews to give themselves the institutions they required seemed to be the most salient characteristic feature of these people. Among the peoples of history, those that have built the most stable and the most flourishing States, like the ancient Romans and the modern English, are those which had the largest number and the most varied kind of institutions. In Japan the sovereignty of the State has been realized in institutions rather than in the personality of its rulers, Mikados or Shoguns.<sup>2</sup> While those that have been politically backward, like the Hindus and the Russians and the Turks and the Mughals of India, would not give the rein to the instinct of institution-making.

<sup>1</sup> Sudre, *Histoire de la Souveraineté*.

<sup>2</sup> Gubbins in *The Making of Modern Japan*, ch. I.

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### INSTITUTIONS RATHER THAN IDEAS

Institutions it is rather than ideas that connect one generation with another, fix and stabilize progress and make secure the permanent and fruitful supports and impulses of society. They give a State the core of that conservative force which is as necessary for its life as change. The failure of most of the ancient peoples of the Near East, Egyptians, Assyrians, Babylonians, to stabilize themselves is due to the fact that they depended more on the character of their rulers, a Thotmes III or an Amenhotep II or a Sargon, rather than on permanent institutions. No better safeguard for a State can be found than loyalty to an institution that lasts rather than to a ruler who may not have as able successors as himself.

### INSTITUTIONS ENERGIZE IDEAS

For institutions it is that give ideas not only form but force. Institutions not only incorporate ideas but give them impetus. Ideas become dynamic only through institutions. Ideas do things only through them. Ideas are formidable only when embodied in institutions. It is true that some ideas by themselves have a dynamic force, they can disturb and destroy. But the ideas that are to construct and educate man must be put into institutions. It is through institutions that ideas salutary to State or society are placed above the reach of subjective argument or personal bias. Not till loyalty to the State ceases to be personal to a king or leader and becomes institutional can the State be said to be secure. Only governments that are institutional endure. Napoleon's saying that "England has no constitution but only institutions" explains the political stability of England. Only self-government that is realized in institutions is proof against the intrigues of men. To give exact form to political ideas is one of the capital questions of public life. Public law and parliamentary proceedings require forms for their efficiency. The ineffectiveness of the French Revolutionary assemblies was due to the lack of

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respect for forms and procedure. Therefore it is that in fighting wrong and false ideas the mere promulgation of right ideas is not enough. These must be brought home to the business and bosoms of men in the form of institutions.

### IDEAS SAFE ONLY IN INSTITUTIONS

Ideas which depend on themselves, as Ihering<sup>1</sup> has pointed out, in one of the most brilliant chapters in his classic work on Roman Law, soon cease to command the adherence of peoples. All makers of society and State have acted upon this truth. The Roman empire was not saved from dissolution in spite of such excellent emperors as Nerva, Trajan, Hadrian and the Antonines, for the reason that they had no suitable institutions to hand. Christianity would have been a mere philosophy or ideal if it had not created for itself the Church and the religious orders which embodied and realized the ideals of Christianity in a concrete form. According to Sylvain Levi,<sup>2</sup> the historian of India, one of the causes of the disappearance of Buddhism from the country was that, apart from monasteries, there were no institutions created by Buddhism. Mediaeval liberties, the foundation of modern liberty, which ensured the limited sovereignty of the State, were secured by the institutions of the Church and of feudalism. The idea of equality preached by Rousseau and promulgated by the French Revolution would have been lost for France and Europe if it had not been realized in the institutions of the Code Civil. Caste, for instance, is the embodiment of an idea, the idea of worth determined by birth. But that idea cannot be fought merely by the promulgation of the idea of equality based upon worth. And one of the greatest tasks of Indian social statesmanship is to build institutions for India which embody the ideas of equality, liberty and social solidarity to take the place of Caste groups. For, an institution can be overthrown or set aside only by the establishment of other institutions by the side of it or in the

<sup>1</sup> Ihering, *Geist des Römischen Rechts*, Vol. III, Sect. 45a.

<sup>2</sup> *Revue de Paris*, February 1925.

place of it. Institutions cannot be brought down by direct and frontal attack. Social reformers in India would do well, therefore, to cease to rail at Caste or to attempt to abolish it by propaganda and by legislation. For, legislation can do the work only when the whole people are convinced of its evil, and then it may not be necessary. And propaganda will not satisfy the craving for group-life which is the lasting legacy of Caste to India. It is only by the building of other groups and other associations based on position, profession or service that Caste can be left high and dry when the stream of progress will have struck out a new bed for itself. It is by building new groups based upon free choice and the new and the larger needs of the social life that is being created in India that the old institution of Caste can be made to cease its baneful influence on Indian society. "No custom," according to the serious advice of Mr. Brayne<sup>1</sup> of Gurgaon fame, speaking from his Indian village experience, "must be attacked unless we have found a satisfactory substitute, or we shall merely replace one devil with seven." Nor need the patriot regret the destruction of such an historic institution. For, as Ihering says, "to destroy an old institution may be only to destroy the chrysalis which hides the future butterfly." And in destroying Caste we are not called upon to wage war on the fruitful idea and institution of group-life, but the futile principle of worth based upon birth. Old institutions can be replaced by new institutions. They can never be conquered by ideas alone.

*Et antiquum documentum novo cedat ritui.*

#### THE EVIL OF INSTITUTIONS

Institutions, though so useful and necessary to man, have sometimes proved a bane. Created to serve him, some have ended by becoming his master. From a means they have been erected into an end. Instead, therefore, of existing only as long as they were needed, they have survived their usefulness. Institutions have to be changed and replaced as soon as they cease to serve

<sup>1</sup> *Journal of the East India Association*, January 1929.

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man. No institution is permanent unless it answers to some permanent need or instinct of man. It is a mark of a free and progressive people that it does not hesitate to modify or abolish its institutions as its needs and circumstances change. Stationary and mummified societies hug institutions to their bosoms long after they have ceased to serve a social end.

### INSTITUTIONS A MEANS, NOT AN END

And even good institutions may prove to be a bane if they are not treated as a means to an end, but as an end in themselves. It is one of the ironies of man's existence that the things which he makes for the realization of some of his instincts and natural feelings get hold of him in course of time and fasten him to their breast with hoops of steel. He creates thought, and thought soon masters him. The poet's frenzy holds him in its grip. Artists have been known to suffer from the tyranny of the Idea they try to put on canvas or carve in marble. Man often becomes the slave of his own creation. The magician becomes bound by the spell of the spirit he has set free. Institutions are good servants; they ought not to be treated as masters. Although man, with the conservatism that Burke enjoins, will always refrain from laying destructive hands on old historic institutions, yet the most historic institutions have a right to exist only so far and as long as they are useful to man. Freedom and progress are the salutary breezes that must blow upon institutions if they are to live and bear fruit.

### INSTITUTION-MAKING ALWAYS NECESSARY

However that may be, the building of institutions is one of the oldest and most constant of the social instincts of man. Free scope must be given to him to realize this instinct provided the ways of realizing it do not tend to destroy that other instinct of solidarity which it is their business to preserve. Institutions are the defences that man throws up to save his social instincts from perishing. They are the camps of exercise in which he renews and strengthens the muscles

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of his social being. As in Art, so in political and social life Form is the condition, though not the cause, of excellence. It is the servitude of a life of Form that serves as an education for liberty. It is thanks, says Ihering, to the servile cult of rule, to a pitiless logic of form which did not draw back before ridicule, it is thanks to the all-powerful rigour of method, that Roman law obtained those advantages that have conserved its value and prestige, the clearness and marvellous limpidity of its architecture, the purity and precision of its lines and of its fundamental forms, the distinction almost methodical between its divers principles.<sup>1</sup> In fact Ihering goes so far as to say that without Roman procedure Roman law may not have been at all. Also in ancient law it may be said that Procedure bred Law. Institutions are the forms in which the spirit of man works. "In this earthly life," says Förster, "the Spirit can be protected only by the solid form; and he who gives up the Form dissipates the Spirit."

<sup>1</sup> Ihering, *Geist des Römischen Rechts*, Vol. IV, Sect. 48.



## VI

### GOVERNMENT AS MAKER OF THE STATE

"It is on this science of government that the course of the progress of the world depends."

KAUTILYA, *Arthasastra*, Bk. I, ch. IV.

#### GOVERNMENT NECESSARY TO MAKE THE STATE

The forces and institutions that we have so far considered have played no inconsiderable part in the making of the State. Religion sanctified and consecrated social relationship, while Custom and Law kept early society together. The social institutions that we dealt with in the last chapter strengthened and expanded society. But of themselves they could not have made the State. They could have only prepared the stuff of the State or could have only brought society to the threshold of the State. Custom and Law were only the prolegomena to politics. Social institutions acted as the propaedeutic of the State. But they could never have endowed the State with those attributes which distinguish it from other forms of social union. They could not have crowned it with that attribute of independence and armed it with that power of coercive authority which are its characteristic notes. To give it these notes another set of institutions had to be organized. We call such institutions political, to distinguish them from the social institutions we have already dealt with. These other institutions have been comprehensively described as Government, for they are the institutions which have to do with the government of man, and which man cannot avoid or escape as long as he continues to be in the State, that is as long as he is a political being.

#### THE FIRST GOVERNMENTAL INSTITUTION

The institutions of government came in the historical succession roughly in the order in which the needs of the State arose. What the State first needs is life. For States, as for individuals,

what is first required is freedom from attack from others. A State to be a State must be sure of its life. The first note of a State is independence. Just as a man whose whole life is dependent on another cannot be called a man, but a slave, so a State which is dependent on another has no claim to the title of State. What freedom is to the individual, independence is to the State. It is its life-blood. If independence is the first distinguishing attribute of a State, the institution that preserves independence is the first of the political institutions of a State.

#### THE ANTIQUITY OF THE ARMY

Some instruments of force, the peoples forming a State have always made and used. For martial power, as Kautilya<sup>1</sup> observes, is the physical strength of a State. The primitive tribe, jealous of its lands, the nomadic horde starting on its wanderings, peaceful or warlike, fashioned the force which it needed to repel the attacks of rivals and enemies. The tribal host is therefore the ancestor of the modern Army, if not in its organization, at least in its objective. In fact it is in the armed host that the tribe developing into a State first shows itself. The tribal chief is the one that leads the State in battle. The primitive king's first duty and most important function is to conduct his people in war, and capacity for military leadership is the most important quality required of him. The Anglo-Saxon king was called the *haefstog* or host leader. The main function of the primitive monarch was to organize the defence or the attack of the primitive tribe or State against its rivals and enemies. All his other functions of priest and judge come only next in importance. The primitive chief was a fighter, not a priest or medicine-man or magic-worker, as Mr. Wells and Sir J. G. Frazer would make him out to be, although it paid the primitive chief to be a priest or medicine-man or magic-worker. The primitive chief was chosen for his military prowess, and was chosen because military prowess could not be secured by birth. The leading class in early society was that of the warriors. Early

<sup>1</sup> *Arthasastra*, Bk. VI, ch. II (Shamasastri's trans.).

government was a military government generally among nomadic peoples. The first cabinet was indeed a war cabinet. The folk moot and the folk array existed side by side among the Germanic tribes. The feudal levy was as important an element of the feudal system as the fief. At every stage of its early formation the State has been made and kept by its army. The chief foundation of all States, new as well as old or composite, says Machiavelli,<sup>1</sup> are good laws and good arms, and as there cannot be good laws when the State is not well armed, it follows that where they are well armed they have good laws.

Although in the modern State the national force of a State consists of different arms, yet the historically important arm is the army. It is true that the navy means more to England than her army, and that a large sea-board requires India to see to her naval protection, and air forces have in recent times come to form a powerful part of the national defence of the State. But as the State is founded on land, it is the army that is the most important part of the national defence of a State. It is a well-known fact that no great State has been won or lost on the sea. Even in the case of a maritime State like England, it is on land that its destinies will be decided, as were those of ancient Carthage. In speaking, therefore, of the arms of national defence, we shall deal with the army. The observations made about it apply with the necessary variations to the other parts of the national force.

#### AS ARMY, SO STATE

The history of a State begins with the history of its army. And in the tribal State each class or sept fought under its own chief and under the aegis of its own banner, and a tribal army was a confederation of armies, rather than a single army under a single command. The armies of the nomadic conquerors of Central Asia and Northern Africa were mostly composed of cavalry. From Attila to Baber the nomad has always ridden to empire on the horse. The armies of the city-States of Greece and

<sup>1</sup> *The Prince*, ch. 12.

Rome, where the work of agriculture and industry was looked after by slaves, were composed of free citizens and the physical features of the countries they had to deal with decided that the most important arm should be the infantry. The liberties of Greece and the empire of Rome were won and preserved by citizen soldiers who fought on foot. Rome lost her empire when mercenary soldiers were called to the front to preserve her. Mercenary soldiers are everywhere a sign of decadence, as is proved by the fate of Sparta in Greece and of the cities of mediaeval Italy at the hands of the Condottieri. The cavalry came into its own in Europe with feudalism. The horse was the prop of the feudal system. The knights of the Middle Ages defended the aristocratic government of a landed nobility against the centralized power of kings and the republican life of the cities which were the legacy of Rome. And the fall of feudalism in mediaeval Europe was symbolized in the defeat of the cavalry of Austria by the peasant infantry of Switzerland on the famous battlefield of Morgarten in 1315. The small simple and cantonal republics of Switzerland supported a militia as did the island conditions of mediaeval England.

The power of the new absolutism in Spain was marked by Cardinal Ximenes' institution of a standing army, which was stoutly opposed by the Spanish nobility. The growth of national and centralized States towards the end of the Middle Ages called for the displacement of feudal levies by national armies recruited and organized by and responsible to a central government. A national State requires a national army composed of all classes and groups among the people. Lafayette thought that the defence of the liberties of the French Revolution was not safe in the hands of a Swiss guard, and organized his famous civic guard, which was the defender of the French Revolution in its early days. The imperfect national unity of India accounts for the caste armies of the past and the racial armies of to-day. And the progress of self-government in India will be determined by the progress in the building up of a national citizen army recruited from all parts of India, as in

the time of the Madras and Bombay armies. "And reason," as Richelieu<sup>1</sup> puts it, "requiring a geometrical proportion between that which supports and that which is supported," a large army will be always one of the major needs of India.

The organization of an army reflects the governmental organization of a State. The dominion of the Turks over a numerous Christian population was helped by the exclusion of Christians from the armies of the Osmanlis and the training of converts from Christianity into the body of the Janissaries. The despotism of oriental States was often defended by slave guards like the Mamelukes in Egypt, the Siddis of Abyssinia, who were also to be found in Persia and parts of Muhammadan India like Hyderabad. The spread of the principle of equality, as among French revolutionary and Napoleonic armies and as in modern Germany, has given rise to the conscript armies of to-day. The absolute monarchy of the *ancien régime* was supported by the bayonets of a wage-earning soldiery, not always recruited from its population, as were the Swiss soldiers that defended the ruined monarchy of the Bourbons. Exclusive recruitment to the army of a State from a particular class means the predominance of that class in the government of a State. The officers of the English and Prussian army are still recruited from the governing classes.

#### THE ARMY AND THE CONSTITUTION OF A STATE

The constitution and development of a State, says the German writer Frantz, are determined by the position of the army in it. The constitutional history of a people runs parallel with its military history. Ihering<sup>2</sup> has noted the connection between the military discipline of the ancient Romans and the spirit of rigid legality which obtained among them. Feudal knights fought and ruled in the Middle Ages. The constitutional progress of England is due, among other things, to the fact that the army has always been kept in its place, and not the least of

<sup>1</sup> Richelieu, *Testament Politique*.

<sup>2</sup> *Geist des Römischen Rechts*, Vol. I, Sect. 8.

the constitutional guarantees of modern England is the annual Army Act that has to be passed by Parliament every year to legalize the existence of the army. To Napoleon, an army was the first thing in life and in death, and its glory and laurels determined almost the whole of Napoleonic statesmanship and policy. In spite of universal suffrage and the other paraphernalia of modern popular government, the army still rules the life of modern Prussia as it created that life in the eighteenth century.

#### THE ARMY AND THE CIVIL POWER

The relations between the army and the Government of a State form one of the most important and difficult problems that confront modern statesmanship. If the army is given special position and prestige as in Prussia before the War, where, through the privilege of duelling and training in exclusive cadet corps, and through the cultivation of a special class-consciousness, and through the prohibition of military officers to wear civilian dress, the army officers were treated as the *élite* of society and as a class apart, and the young soldiers were also kept away from general society in strict barrack-life and in a few large garrisons, it is not to be wondered at that the army has been looked upon and treated as the greatest national institution. If in addition to this the constitution of Prussia recognized the special status of the army by exempting soldiers from the jurisdiction of the ordinary courts of the land, and subjecting them only to the jurisdiction of military courts even for civil offences, the predominance of the army in the social and political life of the country is easily understood. On the other hand, the subjection of the soldiers to the ordinary courts and the civil law of the land, the liability of the decisions of military courts being reviewed by the civil courts, the legal responsibility of the soldiers for every one of their acts, even those done in obedience to the orders of superiors, the subordination of the army to the orders of the civil government make the army in England the servant and not the master of

government and preserves the constitutional character of the political organization of England.

#### THE DANGER OF THE ENGLISH CONSTITUTIONAL THEORY

While we may approve and applaud the rule of law and of liberty which is explicit in the English system, we must also point out the danger that lurks in English constitutional theory. It is well for constitutional government that the army is kept subordinate under the civil power. But to make the army the servant of one authority in the State may make it a two-edged sword. The army that is the servant of the civil authority may well be called upon to help that authority to change the constitution of the State. Many a revolution of modern times owes its success to the support given by the army to the revolutionary change organized by some civil authority. How many of the States of Continental Europe set up as the result of the French Revolution have not been overturned by military movements! The history of the nineteenth and twentieth centuries so far in Continental Europe is largely the history of revolutions organized by the army. Every revolutionary movement tries to get hold of the army as the Turks did in 1906, the Bolsheviki in Russia in 1917, and the revolutions of a later day in Greece, Italy, Spain and Mexico. For the army has to obey the executive power, for that is what its subjection to civil authority means under English constitutionalism. It may also elect to disobey it. The Curragh incident of 1914 should have brought home to Englishmen the weakness of the English constitutional theory. Spanish pronunciamientos occur in illustration of this theory. The dictatorship of Fascism in Italy and of the proletariat in Russia has been made possible by the acquiescence of the army. Civil governments have been overthrown and set up by modern armies as a Galba, an Otho and a Vitellius were set up and deposed by Roman legions. This use of the army in revolution is to be traced as a consequence of the constitutional theory that the army is the



subordinate of civil authority, which means, of course, the executive power for the time being.

#### THE PROPER RELATIONSHIP

The true view of the lawful position of the army in the body politic will come only from a recognition of the fact that "the army," as says Frantz,<sup>1</sup> "represents the power of the State." That power or force must be used, not as a servant of any particular authority in the State, but as the guardian of the State as a whole. The army must be looked upon as the defender of the State and not as an instrument in the hands of the executive. The army must be treated as the defender of the constitution and of the State. The military power must be bound and identified with the constitution. Then only will it cease to be a danger to the constitution. It is therefore necessary to point out the peril that lurks in the use of the army in the suppression of internal disorder. As an expression of the power of the State an army must be used only when there is probability of danger to the State, but the danger must be the supreme danger that threatens the life of the State and not every petty little riot that throws a timid executive into panic.

The use of the army in the suppression of civil disobedience is fraught with danger not only to the army but to the State. The class composition of the officership of modern armies as in England and Prussia would make every such use of the army appear to be one more weapon in the hands of the governing classes against the helpless masses. And the danger is still greater where the army is organized on a racial basis, as in India, where Gurkhas are called upon to fire on riotous Bengalis or the Anglo-Indian auxiliary force is ordered to disperse a body of industrial strikers. The army when it is put to such use comes to be looked upon as a class weapon in the class struggle and ceases to be respected as a national institution. And in consequence the whole-hearted support of the army by popular opinion which will be required in a real crisis may not be

\* *Die Naturlehre des Staats*.

forthcoming. It is best therefore to keep the army as far as possible out of the business of suppressing civil disorder. For the enforcement of strong measures to which the ordinary police may not be adequate, a quasi-military police may be kept in reserve, and if the army is required on those occasions when the existence of the State is threatened, its use should be sanctioned by an impartial and indisputably national authority like, say, the Privy Council or the Committee of Imperial Defence in England, or the Conseil d'État in France, as the President does even now in the U.S.A. In some such way as this the army, like every other arm of national defence, must be made to appear what it is, the expression of the power and the force of the State.

#### THE POLITICAL THEORY OF FORCE

Power expresses itself as force, and the use of force in the organization of the defence of a State leads us to consider one of the most important problems of political life. The use of force as a means of solving the difficulties of social intercourse has been a stumbling-block and a rock of offence to men who, moved by pity, would do away with pain and suffering from this world. Apart from the fact that even if public force were abolished there would still be a vast amount of pain and suffering inflicted by the passions and mistakes of individuals, it must be borne in mind that force in the organization of social order actually reduces the total volume of suffering and pain in the world. But for public force one man's hand would be against another, and the amount of pain and suffering would increase a thousandfold. We are appalled nowadays by the amount of pain and suffering inflicted by war between modern States. But this is nothing compared to the state of force when peoples were at perpetual warfare with each other, as in the Middle Ages in Europe, or in antiquity in Mesopotamia, or among the nomads of Central Asia, that wage perpetual razzias and foraging expeditions against each other. It may be that the cause of ultimate peace on the frontier between India and

Afghanistan may be served by the tribes being allowed to kill each other off in inter-tribal strife, instead of being kept alive by the British Indian frontier system. But no one can deny that the British Frontier Force and administration have reduced the volume of pain and suffering in that part of the world. It is related by Lord Curzon<sup>1</sup> that Amir Abdur Rahman of Afghanistan had to resort to 120,000 deaths, to blinding with quicklime of thousands of tribesmen, to blowing of hundreds of criminals from guns and flaying alive of others, in order to restore peace and order in the country he was called upon to rule.

#### THE USE OF FORCE IN GOVERNMENT

Force as a matter of fact is neither good nor evil in itself. It is an instrument and outcome of personality, individual or social. It becomes evil only in the manner it is used and in the purpose for which it is used. "Force," in the expressive words of Burke, "is the dreadful exigence in which morality submits to the suspension of its own rules in favour of its own principles." If we call force evil, we have to deny value and utility and justification to moral force. For moral force, like sarcasm or irony or ridicule, can inflict pain and suffering as much as physical force. That there are other kinds of violence than physical violence the Mahatma Gandhi and his school seem to forget. And non-violent non-co-operation, like boycott and ostracism, can be as painful as physical force. Moreover, force is used as a rapid cutting of the Gordian knot of social intransigence. It is a solution of social trouble made easy. "The use of force alone is but temporary," says Burke, "for it may subdue for a moment, but it does not remove the necessity of subduing again, and a nation is not governed which has perpetually to be governed." Governments will remember with profit Burke's wise advice, "that great and unacknowledged force is not impaired either in effect or in opinion by an unwillingness to act itself." Peaceful and moral persuasion must be the normal method of government, force only the last

<sup>1</sup> In *Tales of Travel*, p. 52.

resort. Opinion is the queen of the world and force is its tyrant, was a saying of Pascal.<sup>1</sup> And it has to be remembered that force, whether in the preservation of internal or international order, is used only in the last resort when moral persuasion and appeals to reason and good sense have failed. But if society or the State were to wait for moral persuasion to do its work on certain people, social order would have come to an end long before the work of conversion had been accomplished. If we had eternity to work in, we could employ Satyagraha or non-violent non-co-operation, to make use of Mr. Gandhi's English formula, as a normal method of individual and social education. But social order cannot afford to wait always upon moral persuasion. The *argumentum ad baculum* used in season and with discrimination saves time and energy spent in the maintenance of social order. "Nothing turns out to be so oppressive and extravagant as a feeble government," said Burke.<sup>2</sup> It is all the better for a society or State if peace and order could be maintained wholly and solely by peaceful methods. But the State may not perish merely because it cannot be kept alive by the methods of peace. Peace is a good thing, but it is a means, not an end. Not merely nor only peaceful means have to be used everywhere and in all circumstances. The uniqueness of Mr. Gandhi's method of political action lies in the fact that he applies an old method to modern needs. He did not invent the method. As passive resistance it was familiar to the early Christians battling with the Roman empire. His fame is that he has introduced it into politics. But it is doubtful whether in the political field there will be behind the action that great emotion and high incentive required to drive the action to success. Politics is too earthy, too complex and crooked for this delicate instrument to be used always and everywhere. In politics peaceful methods by all means wherever possible, but when they are not possible, other means. Even Machiavelli<sup>3</sup> allowed that it is only when the appeal to law,

<sup>1</sup> *Thoughts*, Art. 5, 5 (Havet's edition).

<sup>2</sup> *Reflections on the French Revolution*.

<sup>3</sup> *The Prince*, ch. 11 (Everyman's Library edition).

the way of men, fails, that the way of force, the way of beasts, becomes necessary. In the attempt to attain peace at all cost we may lose other and higher things. "Erasmus loves peace more than the Cross" was the bitter comment of Luther upon the conduct of his rival and critic.

## WHAT THE WORLD OWES TO FORCE

Not peace, but truth, as F. W. Förster says, is the highest good, and we have only to remember the good things the world has lost for want of force to guard them, like Buddhism in India, the civilization and culture of the Aztecs and the Mayas before the Spanish conquest and the learning of the Chaldeans, as well as the work done for the advance of civilization and culture by conquest as in the case of Alexander the Great in the East, or of Islamic armies in the West, in order to realize the beneficent work that force has done for society and the State. How could law have come into being in primitive times without force? The symbols of the ancient Roman State and Law were the sword and the spear. Plunder and not peaceful occupation was, according to Ihering, the primitive source, and booty, the primitive form of Roman property. The first reaction against social disorder lay in private defence or vengeance. Revenge, as Bacon reminds us, is a kind of wild justice. And even in the rule of civilization and democracy, can anyone say that the fabric of social order is safe against the attacks of the barbarians that modern civilization, as Dean Inge puts it, breeds within itself or against a numerical majority, but for the use of force in the hands of the guardians of order and society? And is the independence of any country worth a moment's effort that is not defended by adequate national force? It was the formidable army of the Togukaw Shoguns, formidable in its numbers (about one-tenth of the male population) and discipline, that from the sixteenth century onwards guaranteed the independence and unity of Japan. The woes of the pacifist nations of history, of Egypt, of China, and of the ancient Hindus, carry a stern warning to

modern nations that the end of these ancient peoples must be theirs if they do not organize force to preserve themselves. "Not only for empire and greatness," Bacon urged, "but for very existence it importeth most that a nation do prefer arms as their principal honour, study, or occupation."

#### THE NEED FOR A JUDICIARY

When a State has organized its defence against attacks from without, it has gone a long way to achieve the preservation of its life. That a State may lose its life from internal disorder as from external attack is evident. The supreme disease of the State is disorder, as order is its first law. Disorder, it is true, can be cured by force, but force can never be an ordinary and normal cure for this disease of the State. Life in the State, that is social life, is essentially and by its nature a life of peace. The disputes between individual members of a State with regard to their rights and obligations and the contracts and obligations and mutual commitments that arise from social life must be settled and decided normally by the methods of peace. Attacks against peaceful life, crimes against individuals, like murder, against property, like arson and theft, must be punished and prevented. There are disturbances in social life as in the life of the body, and these must be prevented or set right. This work must be done by some authority whose power and decisions are respected. The individual cannot settle these disputes in which he is involved with other members of the State, although in some societies individuals were allowed to settle disputes with others by themselves. For this would mean an end to peaceful social intercourse, and only the strong would be left in enjoyment of their rights to life, liberty and property, and that only till some others stronger than they come and take them away from them. It is law that secures for each individual his right, that enforces the obligations and the contracts of social intercourse and secures society from the attacks of disorder from within. And the political institution which enables law to do its work as the upholder of social

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peace and order is one of the most important authorities of the State. It is called the Judiciary.

### LAW NEEDS A JUDICIARY

It is this power that ensures social peace and therefore political life. Political theory, from Aristotle downwards, has recognized the need for the existence of an institution that will enforce the recognition of rights and obligations and settle disputes regarding them. The best system of jurisprudence would be ineffective without a well-established judiciary. Law means and includes procedure. In fact procedure is even more ancient than many principles of substantive law. It would not be untrue to assert, says Maine,<sup>1</sup> "that in one stage of human affairs rights and duties are rather the adjective of procedure than procedure a mere appendage to rights and duties." In Roman law, in ancient Irish law, in Hindu law, procedure came first, and substantive law afterwards. The excellence of Roman law consisted not only in the matter but in the forms of law. In Roman Law, says Arnold,<sup>2</sup> there was not that distinction between law and Action which obtains in other systems of jurisprudence. Law was Action and Action was Law, and Law is put into action by a Judiciary. Respect for law is an index of the political progress of a people. The position and power of the judiciary varies with political progress.

### THE ANTIQUITY OF THE JUDICIARY

After the army, in the order of the history of political institutions, comes the judiciary. In savage and semi-savage societies, where self-help and private revenge are the methods of solving the disputes of social intercourse, there is very little room for a justice-administering institution. A well-organized system of judicial administration is slow to come and only gradually. The State at first interfered through its various organs rather to keep order and see fair-play in quarrels than take them, as

<sup>1</sup> Maine, *Early Institutions*, Lecture IX.

<sup>2</sup> Arnold, *Cultur und Rechtsleben*.



it now does always and everywhere, into its own hands.<sup>1</sup> But as society advances, the need for a well-organized judiciary is more and more felt. In the primitive tribal organization after the tribal host came the tribal judges. Among the tribal chiefs the place of judge was next to that of commander. In ancient Hindu India the king, seated on the throne of justice, is directed to follow the opinion of his chief judge or assessor.<sup>2</sup> The court of justice was probably the most important political institution of Hindu India. In the Institutes of Narada, which describe the fully formed State of Hindu India, "the dominant notion present is not law or right as a sanction, or the distinction between positive and natural law, or between persons and things, but a court of justice."<sup>3</sup> Similarly in primitive Ireland there is no institution worth speaking of, except the court of law, for all society is moulded round it and all ideas centre in it.<sup>4</sup> But Maine's dictum that after the judge came the king can only apply to the pre-political stages when law was found rather than made, and when each class of the people governed themselves according to their own Custom.

#### HISTORY OF THE JUDICIARY

When the State begins to be formed within the tribe, the chief judges as well as commands. The growth of the power of the king and of a central government is marked by the constitution of a king's court, and not the least of the tasks of political consolidation in ancient times was the organization of the relationship between the new royal and central courts and the old popular courts of justice, and, to the extent to which the jurisdiction of the central royal courts increased went also the making of the unified centralized State. That the primitive judges were more the declarers of the law or the custom than judges in the modern sense is proved by the practice of simple people like the Homeric Greeks, whose themistes only applied

<sup>1</sup> Maine, *Early Institutions*, Lecture IX.

<sup>2</sup> Maine, *Early Law and Custom*, ch. XI.

<sup>3</sup> Maine, *op. cit.*

<sup>4</sup> Maine, *Early Law and Custom*, ch. XI.

the customs of the land to the particular cases of dispute brought before them. And very often it is with the acceptance of a unifying and organizing religion like Islam that nomadic peoples recognized the jurisdiction of judges like Kazis or Ulemas.

It is among settled and civilized peoples that a fully constituted judiciary fills an important place in the machinery of political life. But even among them it is not at the beginning that a judiciary is endowed with complete and universal jurisdiction over all causes of dispute arising between members of a State. The law of the *talio*, which figured among the Homeric Greeks as among all primitive peoples, we find persisting in the laws of Solon, and even when a penal code, public tribunals and rules of procedure had been established in Greece, there was no official authority charged with the duty of prosecuting murderers, for it still lay with the relations of the deceased. Among the Romans the Twelve Tables allowed the *talio*. For a long time in Rome the imperium of the Roman magistrates was not defined by law or procedure. Permanent commissions were instituted for the recognition of only certain crimes. It was only in Caius Gracchus's time that commissions were formed to take cognizance of cases of murder and of poisoning. Sulla constituted commissions for cases of arson and false witnesses in the case of wills. There was no hierarchical organization of the judiciary in Rome. Appeal was unknown until imperial times. The judicial functions were specialized with a judge of law, the Praetor, and a judge of fact chosen by the Praetor from an annual list.

It is in the State of civilization that the judiciary begins to play an increasingly important part in the political life of a people. Among civilized peoples a variety of occupations like agriculture, trade and industry multiplies the number of possible disputes and differences. Without a well-constituted and well-obeyed judiciary the people of civilization could not have endured. The progress in civilization of a people may be judged by the position occupied by the judiciary in its public life. The priestly judges of ancient Egypt, who wore a symbol of

truth on their necks, administered a stern and rapid justice by a code that was famous, according to Diodorus, among the peoples of antiquity. According to Manu, one of the highest duties of a king is to administer justice, surrounded by Brahmins and experienced advisers, and the greatest of a king's title is judge or guide of justice. Rome lived and prospered by reason of its wonderful system of law, which tamed and civilized not only Romans but a whole world of peoples divided from each other by differences of civilization and culture and put them on the path of progress. The freedom and prosperity of England are due to its rule of law and the pre-eminence of the judiciary in its public life, for it is the judiciary that guarantees the fruits of individual initiative and endeavour.

#### CONSTITUTION OF THE JUDICIARY

The high position and prestige of the judiciary are proved not only by the respect for law and judges shown by the peoples of civilization and freedom, but by the care bestowed by them on its constitution. The peoples of antiquity recognized the high position of judges and chose their judges from the priestly class and endowed them with sacred attributes and functions. The first judges in Rome were the Pontiffs. In mediaeval England and other countries of the Continent, judges not only were the first servants of the State, but they were also held in higher esteem than mere administrators. The Lord Chancellor and the Judges of the King's Court were the first to obtain public eminence in the State, and even to-day the most important official next to the Prime Minister in an English Cabinet is the Lord Chancellor. The care shown in ancient times in regard to the selection and position of judges continues to the present day. The judiciary in modern times has to attain a high degree of efficiency if it is to fulfil its purpose and maintain its place in the body politic and in the esteem of the people. Its machinery must be attuned to its high purpose. There is no more important task confronting modern States than that

of building a judiciary that will stand the test of the great tasks entrusted to it.

The experience of history has deposited certain principles which should inform the constitution of a good judiciary, i.e. that justice should be administered in public, that courts of justice should be in perpetual sessions, that access to them should be easy and free and brought almost to the doors of the people by the multiplication and the even distribution of courts all over the country, that only men learned in the law of the country and possessing the essential qualities of impartiality and independence should be appointed as judges. That justice should be cheap and accessible to all is accepted as a principle governing the constitution of the administration of justice. It can no longer adhere to the mediaeval maxim deposited by Feudalism, *Justitia est magnum emolumentum*. That the judiciary should be absolutely independent of every other power in the State is a necessary principle for ensuring and realizing the impartiality of the judiciary—the cold neutrality of an impartial judge, to use Burke's picturesque phrase—and the other attributes of a good judge.

This is required not only in the interests of the judiciary but for the sake of the State. Whatever is supreme in a State, said Burke, ought to have as much as possible its judicial authority so constituted as not only not to depend on it but in some sort to balance it. It ought to give a security to its justice against its power. It ought to make its jurisdiction, as it were, something external to it. The independence and autonomy of the Roman magistrates enabled the Praetor to be progressive and rendered a great service to the development of Roman law. To secure this quality of impartiality and independence in most modern countries, the judges, at least the supreme judges, are appointed for life and are irremovable. The constitution of the United States of America in this respect is more alive to the importance of securing the impartiality and independence of the judiciary than even that of England, where judges are kept in office *quamdiu bene gesserint*, and

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are removable only by the petition of the legislature. Hamilton defended the life tenure of judges against the democratic Jefferson, who would have four- to six-year judges, on the ground that an independent judiciary is, in a monarchy, an excellent barrier to the despotism of the prince, and in a republic is a no less excellent barrier to the encroachment and oppressiveness of the legislative body.

### THE JUDICIARY OF THE U.S.A.

The position of the judiciary in the United States of America is indeed pre-eminent, for it has the right of pronouncing upon the validity of the acts of the legislature. This, of course, it does, not by sitting in judgment on the legislature, but by deciding on particular cases brought before it that the Act in question is in contravention of the constitution of the United States, which is the supreme law of the land. On many occasions has the Supreme Court passed judgment over the Acts of the other authorities in the State, as in 1803 in *Marbury v. Madison* when an Act of Congress, under which mandamus had been issued against Cabinet officials,<sup>1</sup> was declared invalid; or when a New York labour law restricting the hours of work in a workshop to ten hours a day was declared unconstitutional; or when another New York statute, this time embodying the principle of workmen's compensation, was declared invalid.<sup>2</sup> The high and eminent place filled by the judiciary in the government of the United States of America is illustrated by the fact that Marshall, the Chief Justice of the Supreme Court from 1801 to 1835, was the second creator of the American constitution. In fact Chief Justice Marshall, as he administered the oath of office to five successive Presidents in about thirty years, must have appeared the symbol of the State rather than the ephemeral President of a quadriennium or two.

<sup>1</sup> Warren, *The Supreme Court in United States History*, Vol. I.

<sup>2</sup> Coudert, *Certainty and Justice*, ch. III.

## THE APPOINTMENT OF THE JUDICIARY

The appointment of judges and the organization of their office is one of the most important questions to which the government of a State has to apply its mind. That the head of the State or of the executive should appoint the judges is accepted not as the best thing or the best means, but as the best possible means of appointing a judiciary. For, obviously a legislature or a representative assembly could not be entrusted with this work. The popular election of judges may do in small communities where the candidates are known to the electors and where the standard of political morality is high and secure, but is ruled out in the case of the large, complex, inorganic, electoral constituency of the modern State. It is true that the appointment by the Executive carries with it the danger of favouritism and graft or lobbying. The danger might, however, be avoided by entrusting the appointment of judges to an independent commission which would be free from political bias or dependence, but it would be difficult to find a modern government that would give up this means of exercising patronage and awarding political service. The danger of appointment by the executive is considerably reduced by making the tenure and promotion of judges of all but the lowest courts, which are generally entrusted with executive functions also, absolutely independent of the executive. An independent and supreme judiciary may well be entrusted with the task of regulating the promotion and work of all classes of judges. It ought to go without saying that the emoluments of judges ought to place them on the highest level of public eminence. A pension that will secure a competence and ensure the purity and incorruptibility of judges will help them to leave their posts when they are not able to fill them with success and efficiency. The classic case of Bacon shows the danger of stinting in regard to the emoluments of judges for, although Bacon's extravagances may account for his lapses, something must be placed at the door of the insecure tenure by which he held his high position.

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### THE JUDICIARY AN INSTRUMENT OF PROGRESS

The proper constitution of the judiciary is one of the most important tasks of constitutional arrangement. The praetorian jurisdiction and the praetorian instructions to the other judges at Rome ensured both liberty and progress. The constitution of a court of Equity which would correct and supplement the decisions of the ordinary courts conduces to legal progress. Although, according to a well-known legal maxim, equity must follow the law, every well-constituted system of law provides for the equity of one generation becoming the law of the next. Justice and judgment in equity form part of the wisdom of a wise king, according to Ecclesiasticus. For a judiciary has not only to uphold social peace and order, but it is also charged with the duty of contributing to the liberty and progress of the people of a State. The connection between liberty and justice realized by Burke, when he said that "whenever a separation is made between liberty and justice, neither is safe," is proved by historical experience. Everyone will agree that the test of good government is the protection of minorities. It is only when the weak have as much protection as the strong that a free and constitutional government can be said to operate in a State. "It is impossible," says Coudert,<sup>1</sup> "to protect the rights of minorities unless there be courts to which an appeal may be taken from the doubtful legislation of the moment." The judiciary not merely performs the negative function of seeing that the existing laws are preserved and obeyed. It is also an instrument of progress. If progress is to depend only on legislation it would be slow and lag behind social facts and circumstances. Judge-made law is an important part of every sound system of law. The Roman praetors did more law-making than the assemblies. Important changes in Roman law were effected by them. It was thus that the Roman law of possession, the greater part of the law of obligations and of succession arose.

<sup>1</sup> *Certainty and Justice*, by Coudert, ch. III.



## THE VALUE OF THE JURY

A frequent element of judicial organization in popular constitutions is the inclusion of representatives of the people in the form of an institution, which in the course of time came to be called by the name of Jury. The participation of the people in the administration of justice is found among ancient peoples, as among the German tribes where the folk judged their fellows, or in Indian villages where the village panchayats judge their fellow-villagers. This representation of a people in judicial administration proved its utility in primitive times as the detection of crime and the proper punishment of an offender were possible only if the fellow-men of the accused could be entrusted with this task. It is doubtful, however, whether the jury as it operated in mediaeval England and which was the ancestor of the modern jury, as we know it, could trace its origin to those folk assemblies of the German tribes. In England, where the jury attained all its complex development, it was, as the researches of Maitland and other English scholars proved, from the beginning used by the kings as a device for their own royal purposes of controlling and preventing crime and securing their hold on the people of the country. The origin of the English jury, it is one of the commonplaces of English historical science, was royal and not popular. It was only in the course of time when the judges came to be all royal officials and administered justice in the interests of a strong centralized monarchy that the jury came to be recognized as the palladium of English liberty. When offences and crimes were treated as personal attacks on the king, the jury, representing the people, served the purpose of defending their liberties. But as crimes came to be treated more and more as attacks on the State, the jury ceased to serve this purpose. The jury as a means of detecting and punishing crimes ceased to be efficacious with the growth of an organized and efficient royal police.

## THE JURY OUT OF DATE

With the development of a scientific system of evidence and procedure and the rise of a learned and well-equipped judiciary, recruited according to merit and impartial and independent of all authorities in the State, there seems to be little point in retaining the jury in civil cases. Nor is there much profit in using it for the detection of crimes like murder, theft, or arson, where a well-organized police and the laws of evidence and a scientific procedure are quite sufficient for their detection and punishment. The only class of cases in which the jury may still be retained in modern times is that of political offences, where the mind of the people as to what constitutes an attack on social order and public safety may well be held to receive as much recognition as the suspicions or fears of a nervous executive.

The persistence of the jury in countries which derive their ideas of judicial organization from England is an instance of an institution surviving its usefulness. English criminal procedure still persists in looking upon a criminal trial as an ordinary law suit, litigious and controversial in its proceedings. It is not such a good detector of crimes as the French criminal procedure, which is rather an investigation conducted by the officers of the government for the discovery of crime. Napoleon considered the jury to be an out-of-date institution, which had no *raison d'être* nowadays. It was useful, he thought, in defending the conquered English against the attacks of their Norman conquerors. But not only Napoleon, but even judges of the United States of America in recent times, have thrown doubt on the utility and even the necessity of a jury. There is no intimation here, says an American Judge in a recent case,<sup>1</sup> that among the privileges of a citizen of the United States, are the right of trial by jury in a State court for a state offence and the right to be exempt from any trial for an infamous crime, unless upon presentment by a grand jury. And Mr. Coudert con-

<sup>1</sup> Quoted in Coudert, *Certainty and Justice*.

cludes a study of the jury in the United States of America with the words "that the jury has ceased to be a sacrosanct institution," and William H. Taft,<sup>1</sup> no mean democrat, was so much impressed by the utility and efficiency of the French system, as he found it working in the Philippines, that he has urged acceptance of it by his own people.

While the efficient administration of justice may not require the jury, it is a question whether, in spite of proved defects, it should not be retained as a means of political education. The jury system, well constituted and widespread, is an excellent means of bringing the common people into the administration of justice. If democratic self-government is to be a reality, the people must have a hand in the administration of justice. How the jury can be a political teacher as well as a safeguard of freedom is proved by the history of England.

#### THE BAR AND THE BENCH

Not part of the judiciary, but as a help and support to it, is a well-organized Bar. The efficiency of judicial administration depends largely on the learning, the honesty and integrity of lawyers. In most modern States, great jurists who are not lawyers practising before the courts have not the influence they exercised in ancient Rome. The development of Roman Law by the jurisprudentes was due to the power and influence which they owed, not to any office given them by the State, but to the recognition of the people and to the services they were unofficially able to render Roman Law. Corresponding to the Roman jurisprudentes in modern times might be considered the professors of law at the universities. But they exercise little or no influence on the development of modern law. The Roman jurisprudentes were as practical as the modern practising lawyer, as scientific as the modern university professor of law, and as popular as the modern politician. Although the Roman jurist cannot be revived in modern times, his qualities and attributes must be united in some class of lawyers, so that

<sup>1</sup> Quoted in Coudert, *Certainty and Justice*.

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modern administration of justice may be made as scientific and as progressive as the Roman system.

### THE JUDICIARY IN THE MAKING OF THE STATE

However that may be, whatever its constitution, the judiciary plays a great part in the maintenance of the State as in its making. Small States and large States have required the judiciary to keep them together. "It is public justice," said Burke,<sup>1</sup> "that holds the community together." If political life is to be a life of peace and is to be based on the observance of law and order, the supreme need for a judiciary needs no elaborate argument. All the great States of the world have lived and flourished on their judicial system. The great empire of Rome, the free empire of England, owe a great part of their life and prosperity to their judiciary. Especially does the modern State, with its complex organization, with its numerous and difficult social problems, its sharp class antagonisms, its consequent perils need an institution that will determine the disputes and quarrels arising in such a society by the methods and according to the ways of peace. If the administration of justice between individual and individual or between class and class is one of the chief instruments of government, the prominent position of the judiciary and its paramount service in a State will be readily recognized.

### ADMINISTRATION AND THE STATE

The work which the army and the other forms of national defence and the judiciary did for the first States, although great and important, was purely defensive. They prevented things being done to the State. They did little or nothing actively to promote its work or prosperity. If a State depended only on its judiciary and army, it could not have gone far in the direction of development. If the ancient king had been only an army commander and a judge, he could not have done much for the State. The ancient State, provided only with an army and a judiciary, would have been of negative utility. It could not

<sup>1</sup> Speech on Economical Reform.

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have done anything positive or progressive and even army and judiciary could not have functioned if they had been left alone. The resources of the State could not have been exploited and would not have been used for the purposes of the State. Another power had to be set up and other functions had to be attributed to the primitive ruler if the State was to advance in its work. For the active management of the State another power and authority had to be created.

### EXECUTIVE OR ADMINISTRATION

The name of Executive has been given to the body of persons and offices which have for their object the conduct of the active management of the State. But executive is not a happy word applicable to all systems of government. It has been defined as "that power in a State which executes the commands of the law-making power in the State." It is therefore applicable only to those systems of government which possess a supreme legislative body, single or multiple, whose commands the executive have to execute. It is not every system of government that possesses a legislature, and even a legislature cannot provide rules and regulations for each and every circumstance of social life. If an executive had to depend for its governance of the affairs of the State upon the laws passed by a legislature, it would very soon find it could not do its work and duty for the State. It is a very small proportion of the police or sanitary regulations of a State, for instance, that are or can be passed by the legislature. An executive, therefore, has to do much more than execute the behests of the legislature. And it is a violence done to language to say that the executive does those things that are not passed by the legislature simply because the latter permits the former to do so. It would be better, therefore, to find another word for the set of institutions that have to do with the management of the State. The term Administration is applicable to all forms of executive action and fully describes the whole duty of the executive, which is to administer the affairs of the State.

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### A HISTORY OF ADMINISTRATION

The primitive Administration had not much to do because the primitive State was not confronted by many great problems of government. The population was too small, the life was too simple, the problems of government therefore too few, for the activity of the Administration. It was only as the State grew in size and complexity and civilization and culture, when it had to do many things for the people, that the administrative power grew in importance and in the complexity of its organization. In the savage or semi-savage State and even in the nomadic, the executive power of the chief was little, because the government of the people was in the hands of tribal councils or local groups. The administrative power was comparatively unimportant in stationary States and in the age of Custom. Even in the feudal State, executive administration was small and governmental officials were few. But as the power of the central government grew at the expense of the feudal nobility, the royal jurisdiction, which was at first exercised only over such unclaimed articles of feudal jurisdiction as orphans and widows, aliens and Jews, came to include other classes of persons and things. As the power of the central authority increased and it was charged with the duty of looking after the organization of the law and order and progress of the country, the administrative power increased in strength and importance. A large and well-organized State requires the exploitation of the resources of the State and therefore the building-up of a proper administration. The growth of taxation is an index of the growth in importance and power of the administration of a State. It is the modern State with its large size and population and the numerous needs and ambitions of its people that has brought into existence the modern administration, numerous, complex and highly organized.

### ADMINISTRATION, THE HEAD OF THE STATE

In the modern State, the Administration or the executive power which was the last to develop in the primitive State stands, by

reason of its work and service, at the head of the governmental institutions of a State. It administers or manages its affairs. It sees to the maintenance of law and order in the State, for although the judiciary is charged with the duty of maintaining law and order, crimes and offences against them must first be brought to the notice of the judiciary. Before we can punish a criminal we must first catch him. The police, which normally look after the prevention and prosecution of the acts of internal disorder and crime, work under the orders of the Administration. The rules and regulations governing the measures of sanitation and hygiene, the development and maintenance of communications, the regulation and practice of commerce, the organisation of education, of agriculture, of industry in a State, are made by the Administration. It organizes the national defence of the State. It does all those things that are necessary to put the life and power of the State into motion.

## ADMINISTRATION, THE REPRESENTATIVE OF THE STATE

It is the Administration that holds the State together. One can conceive of a State without a legislature and such States have existed in history, like those of ancient India, but no State can exist for a day without an Administration. The legislature of a State can take a holiday without damage to the State, but no State could live for a single moment without the Administration. The Administration of a State can never go on leave. It is ever alert and on the watch and a State might begin to break to pieces as the result of one moment of carelessness of this power. It is the Administration that brings the people and the State into daily and even hourly contact with each other and it is no wonder therefore that government means, to most people, the Administration. It is the members of the Administration, the policeman, the tax-collector, the sanitary overseer, the inspector of schools, that symbolize the power and activity of the State to its people. Administration is in fact the real ruler of the State. This view, based upon the facts of political life, is strikingly embodied in some of the new constitutions of Europe, as in



the German constitution, which provides that the national cabinet "supervises the conduct of affairs over which the Commonwealth has jurisdiction," or as in the Esthonian constitution, which decrees that "the government of the republic directs the internal and external policy of the State and ensures the preservation of internal and external security and the execution of the laws." This view of the importance of Administration is coming into vogue in England if we are to believe a recent English writer on constitutional law, who says that the centre of gravity in English government has shifted from legislation to administration during the past half-century and the hegemony of the executive, whether Englishmen like it or not, has become an accomplished fact.<sup>1</sup> Administration is the cog-wheel of the machinery of the State. It is the keystone that supports the arch of the State. It is the most necessary institution of government. "Constitute government how you please," said Burke, "infinitely the greater part of it must depend on the exercise of the powers which are left at large, to the prudence and uprightness of ministers of State."

#### THE CONSTITUTION AND THE ADMINISTRATION

In view of the vast importance of the work and activity of the Administration, its proper constitution is the most important business of those charged with the duty of organizing the government of States. We have Burke's authority for the view that "the due arrangement of men in the active part of the State, far from being foreign to the purposes of a wise government, ought to be among its very first and dearest objects."<sup>2</sup> But in the minds of most constitution makers of modern times, under the influence of Montesquieu, the legislature takes precedence of the executive and the results have been unfortunate. The frequent failure of most of the post-revolution constitutions of Europe may wholly be attributed to the secondary place the executive held in the pre-occupations of their makers.

<sup>1</sup> Robson, *Justice and Administrative Law*.

<sup>2</sup> *Thoughts on Present Discontents*.

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In the very interests of a popular legislature the executive has to be strong. If popular sovereignty and responsible government mean anything more than the control of the executive by the people or its representatives so as to prevent tyranny, if this constitutional principle of responsibility means that the executive derives its authority and its right to govern from the people, then such a view of the rights and power of the executive is a perversion of the truth. The Executive or the Administration, like every other power in the State, has its *raison d'être* in itself. It is from the nature of things, rather than from the will of the people, that the Executive or Administration derives its authority.

## PRINCIPLES OF THE CONSTITUTION OF ADMINISTRATION

If any system of government is to endure, the proper constitution of the Administration and of its relations to the other parts of the government must hold the first place in the organization of such governments. "The problem of the constitution of a good Administration," says Frantz, "is the most important, as it is the most difficult problem of practical statecraft." The general form of government, the character of the people, the needs of the country, determine the principles upon which any form of Administration should be constituted. The Administration of a centralized State could not be the same as that of a State which has vigorous and powerful local self-government. An elected and representative legislature requires the principle of election, to some extent or other, in some form or other, in the Administration. "Every sort of government," says Burke,<sup>1</sup> "ought to have its administration corresponding to its legislature. If it should be otherwise, things must fall into a hideous disorder." A strong and numerous Administration is required for a people which expects this power to do most of the things which in other States would be left to the initiative and work of individuals or private corporations. It is only an Administration that is formed

<sup>1</sup> *Thoughts on Present Discontents.*

in conformity to the other parts of government and to the character and needs of its people that can be expected to fulfil its purpose.

## DEPARTMENTS OF ADMINISTRATION

First among the questions that have to be dealt with when the organization of a modern Administration is taken up, is how many institutions, or departments as they are called, it shall have. The number obviously depends on the number of tasks and duties imposed upon Administration. They vary from government to government and from people to people. Some peoples expect little more from their governments than the minimum duties that will keep the State whole and entire. Others expect their governments to do everything for them and are tied to their apron strings. Between these two extremes there are intermediate degrees of governmental activity. The number of departments of an Administration depends, therefore, on the extent of governmental activity. But the minimum of work every government must perform creates a minimum number of departments of an Administration. First among these is the department which has to do with the preservation of social order within the State. This is known as the Home Department or the Ministry of the Interior, to which is entrusted the policing of the State and all those functions that are necessary to maintain peace and order in the State. Money is the sinews of not only war but of peace, and the department of Finance, which has to do with the collection of the revenue and which controls the expenditure of the State, is one of the most important departments of Administration. For the state of the finances of a country is the index of its stability and its prosperity. Next to a strong army, the possession of a prosperous treasury was, according to Kautilya,<sup>1</sup> the strength of a sovereign State. Every State has relationships with other States, and the department to deal with its Foreign Affairs is among the most important departments of government of a free and indepen-

<sup>1</sup> *Arthasastra*, Bk. II, ch. 2 (Shamasastri's trans.).

dent State. Other departments of Administration have to do with the organization of such things as the sanitation and the health of the people and their education. These objects may be considered to be the necessities of governmental activity, that is, those with which every government worth the name must concern itself.

The rest are the luxuries of governmental activity. In a normal and healthy State, the agriculture, the industry, the commerce of a people are left to the free, unfettered activity and initiative of the people. But in diseased States, where the economic life of a people has got into holes and pits from which it must be rescued, or in undeveloped States where the people if left to themselves would only mark time and be stationary, administrative activity may be required to promote the economic progress of a State, and thus we have in many modern States Ministries of Agriculture, of Industry, of Commerce, of Labour, and so forth. But the order of preference in the duties of government was laid down in unimprovable terms by the fathers of the American constitution, when they said they framed it "in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare and secure the blessings of liberty."<sup>1</sup>

#### BUREAUCRACY

The multiplication of government departments has nothing to do with the form of government. It is found in absolute monarchies like those of Prussia and Russia before the War and patriarchal monarchies like imperial China, or in ancient India, where, according to Kautilya,<sup>2</sup> there were superintendents of all kinds, even of gambling and courtesans, and in modern democracies. This phenomenon of Bureaucracy, as it has been called, has nothing to do with the form of government, but is the consequence of the modern fashionable theory of the duties

<sup>1</sup> Preamble to the American Constitution, given, e.g., in Appendix to *The Federalist* (ed. Lodge).

<sup>2</sup> *Arthashastra*, pp. 153, 449 (Shamasastri's trans.).

of a State. Bureaucracy derived from the French word *bureau* which signifies a department, means a large army of officials and a vast rabbit warren of departments that are among the outstanding features of modern Administration. It is also one of the most formidable phenomena of modern politics. Modern bureaucracy is so powerful in numbers and in its powers and activity that it has to be reckoned with as a dominant factor of modern political life. Its power modifies that of every other authority in the State. The legislature, the judiciary, the army, the head of the State have to reckon with its influence. Democracy, the rule and sovereignty of the people, is limited by it. It has become a power behind the throne, more formidable than priest or favourite or secret society. Cabinets may come and go in England, but the permanent civil services go on for ever. Legislatures may pass laws, but they have to be put into effect by the bureaucracy. The modern legislature is especially dependent upon the bureaucracy. For the large part of the laws passed in the interests of social progress have to be executed by a growing number of officials and government departments. And for greater efficiency and rapidity of work, the legislature has endowed these government departments with vast powers and with a large measure of freedom from its own control. The modern Administration is endowed with powers of delegated legislation. Efficient as the modern bureaucracy has to be, its political danger lies in its very efficiency and utility. The modern State, with its vast pretensions and large demands, needs it so much that it could not put it away. The danger of bureaucracy will go only when the modern theory of the multiform activity of the State is given up.

#### RECRUITMENT TO THE ADMINISTRATIVE SERVICES

The constitution of this most powerful instrument of government is one of the most important, as it is one of the most difficult tasks of modern statesmanship. It was Bacon's experience that the greatest errors are committed and the worst judgment shown in the choice of individuals. The recruitment of

the members of the administrative services must be governed by the purposes of administration. It is an obvious principle that only those must be recruited for service in one or other of the administrative departments that possess the qualities required for administration. General education, character, especially honesty, capacity for leadership and management of men are qualities which are to be required of every chief of an administrative department. But without the special technical knowledge required by each department of administration, its officials could not be of the fullest use. How to secure proper men for the administrative services is not the least difficult of the tasks of the government. Competitive examinations as a means of filling up administrative posts were the invention of the Chinese and the lettered bureaucracy which they created were the original contribution of China to political practice.<sup>1</sup> They were introduced in Europe in the nineteenth century and expected to solve the problem of recruitment to administrative service. But competitive examinations are only tests of memory and of academic knowledge. They are no tests of character, especially of the qualities of leadership. They were employed as an escape from the orgy of patronage, favouritism, purchase of offices and commissions which preceded them. They cannot be accepted as the only unqualified method of recruitment for modern administrative services. The faith in competitive examinations, acknowledges an English Civil Service Committee,<sup>2</sup> is not what it was twenty years ago. Some tests, rough and ready though they be, of character, must be requisitioned, like the reports of schools or colleges or university authorities. Distinction in games, especially games requiring team work, like the English games of football and cricket and hockey, may well be taken as an index of capacity for leadership and the management of men. Competitive examination, therefore, modified by the personal choice of selective Civil Service Commissioners, seems to be the best means of recruiting for the administrative

<sup>1</sup> Letourneau, *L'Évolution politique*.

<sup>2</sup> Report of the Committee appointed by the Lords Commissioners of His Majesty's Treasury (1917), Cd. 8657.

services. The interview has come to play an important part in modern selection. The general education that ought to precede, and that would be decided by these competitive examinations, is to be of a kind that would fit the recruits for the business of administration. Besides the subjects of general education, like languages and literature, mathematics and science, a course in history, law and jurisprudence, political economy and political science specially seem to be indicated.

#### PRINCIPLES GOVERNING CONSTITUTION OF ADMINISTRATION

The administrative power, by reason of its very numbers, requires concentration and unity at the head. Whether the supreme executive shall be single or multiple is decided by the purposes of the institution. The business of administration is to act and what is required of the supreme administration, therefore, is singleness of purpose and decision, and the decision must sometimes be rapid, as in the case of threatened invasion from outside, or a riot within the State. A single executive, therefore, is required by the purpose of administration. Although the supreme executive may be multiple, the ultimate direction and final authority must be in the hands of a single person. The primitive State could get on with a multiple executive like a Council of Elders, such as the Guegues of Nicaragua, the Induna of the Kaffirs and the Gerontes of Sparta, but not the modern State. The Senate of the Roman Republic is the only example of a multiple executive that has a record of service to its credit. But the Roman Senate was a body of experienced administrators, recruited from a single class and in complete unison with the heads of the State, the two Consuls. But when the union and solidarity of the multiple executive of the Senate and the Consuls broke down, Roman administration had to be concentrated in the hands of a single Princeps. The Spartan Ephors had to do with the government of a comparatively primitive State. The Directory of the French Revolution and the Senate of the United States of America, which prevents things being done, are not shining examples of the multiple executive.



## RELATION OF ADMINISTRATION WITH THE OTHER POWERS

A description of the position and powers of administration is not exhausted by a description of its internal constitution. Its relation to the other parts of government determines its power and prestige. According to modern constitutional theory, the executive is the subordinate of the legislature. This description, however, is a travesty of the proper relations between the executive and the legislature. The administration or the executive is a subordinate of the legislature only because the latter is at the same time the national representative assembly of the people. But so can the judiciary be reckoned as subordinate to the legislature. But in fact, in all matters not legislated for, the Administration has its own jurisdiction and exercises its own discretion. The Administration cannot do its appointed task if it were to wait upon the good will of the legislature. The theory of the subordination of the administration to the legislature arose from the historical fact of the secular struggle in England between a popular representative legislature and a monarchical, hereditary, irremovable executive. This theory has lost whatever justification it once had in these days of popular and responsible executives. The facts of modern politics are against the tenability of any theory which subordinates the administration to the legislature. Who can say, for instance, that the President of the U.S.A. is in popular esteem inferior to the Senate or the House of Representatives? Nothing is gained for freedom or constitutional government by the prestige of the executive or administration being reduced. The idea of the superiority of the legislature to the executive carries with it the danger pointed out by Frantz,<sup>1</sup> that in popular esteem self-government means only participation of the people in legislative work. But legislation is a very small part even of modern government and popular government would be very imperfect indeed if it meant that the people had no part nor lot in some way or other at the circumference, if not at the centre, in the

<sup>1</sup> *Die Naturlehre des Staats.*

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business of administration. Popular government would only be a third of what it should mean if it were restricted to the participation of the people in the business of legislation and is not extended to participation of the people in executive and judicial administration.

### ADMINISTRATION AND THE LEGISLATURE

And in the very nature of things, the power and prestige of the Administration may not be reduced for the power and the life of the State might thereby be imperilled. The Administration must be allowed free scope and discretion in regard to the performance of its duties, provided, of course, its acts are not forbidden by the law and custom of the constitution. Within the limits of its lawful competence and jurisdiction, the administration must be allowed to act without let or hindrance from the legislature. It is the administration that is primarily and normally responsible for the welfare, nay, for the very existence, of the State. That responsibility it could not depute to any other power in the State. That responsibility it could not fulfil if it is unnerved by the undue influence of the legislature, which claims to do so on the strength of a supposed subordination of the administration to the legislature. Responsible, modern administration is to people or to legislature, but not subordinate. The American constitution, which provides for the popular origin of the supreme executive as well as of the legislature, ensures the position and prestige of the Administration better than the English constitution, which in theory, if not in recent practice, subordinates the executive to the legislature. The end of a State with a weak, ill-esteemed and prestige-lacking administration is shown by the fate of Poland before the partitions, France under the Directory and Italy on the eve of Fascism.

### THE ADMINISTRATION AND THE JUDICIARY

Administration has to be related to another governmental institution, the judiciary. Owing to the guardianship of the laws of a country being placed in its keeping, the judiciary neces-

sarily has jurisdiction over the acts of administration. The members of the administration may not plead exception to the rule that in a free State every one is bound by law. It is necessary especially that the officers of administration with the vast powers they wield should be kept in the strait path of legality and justice. The rule of law is therefore essential to every free government. But what this rule of law should be, whether it should mean as in England that the officials of the administration should be subject to the jurisdiction of the ordinary courts and cannot claim any special privileges or exemptions, or whether it should mean as in France that the officials should be subject to the jurisdiction of a special *droit administratif* and special administrative tribunals, is a matter of historical development and national genius and circumstance. But that in the French system administrative officials are made responsible for their acts and that individual freedom is guaranteed against administrative tyranny, there can be no doubt. A recent writer on the English constitution<sup>1</sup> already referred to, has shown that England has never been free from administrative tribunals and even Professor Dicey in his last days had to acknowledge the spread of administrative law in England. But however the rule of law operated, it could not be interpreted so as to make the administration the subordinate of the judiciary or so as to paralyse executive action. The autonomy of the executive is as necessary for the progressive State as the supremacy of the judiciary is necessary for a free State.

#### THE LEGISLATURE

In the historical procession of political institutions, the legislature comes the last. Law-making is comparatively a modern function of the State. Many peoples have got on with no laws made from time to time or with very few laws. Most governments of antiquity have been, as Maine pointed out, tax-gatherers rather than legislators. Stationary societies have no need of frequent legislation. The laws of the Medes and Persians, like

<sup>1</sup> Robson, *Justice and Administrative Law*.

those of the Hindus, could be unalterable. Customary law was enough for the government of such societies. Legislation comes only with the idea of progress. Maine,<sup>1</sup> indeed, accounts for the progress of the States of Western Europe by the influence, direct and indirect, of the Roman empire drawing with it an activity in legislation unknown to the parts of the world which were never subjected to it. New laws are required only for societies that change their modes of life and take to new occupations. Law-making organs come late in the life of the body politic. But they are absolutely necessary for the making of the large State. Legislation and the break-up of local life, says Maine,<sup>2</sup> appear to have universally gone on together, and the Roman empire realized the prophecy of Daniel in devouring, breaking in pieces, and stamping out the laws and customs of the conquered peoples. And one reason why India has never been able to become a large State is the absence of legislation acting frequently and intensively. And if the modern legislatures of India, in spite of all their defects, could be used as the unsatisfactory legislatures of Tudor England were used, much might be done for the integration and progress of the State in India.

## A HISTORY OF THE LEGISLATURE

The first law-making organ was an individual. The first legislators were kings. The first English laws were made by kings like Ethelbert, Ine or Alfred. But the problem presented by the legislature as a part of government does not arise until the legislature becomes numerous and separate from the primitive single monarch who was the legislator, administrator and judge all rolled into one. The principle of the separation of powers cannot arise in an absolute monarchy. The small administrative legislative committees like Scandinavian Dings and German Moots, comprising the personal advisers of the early mediaeval European tribal chief, corresponding to the Afghan Jirgha, the Mongol Taitsi, the Negro Palaver, composed of those who,

<sup>1</sup> Maine, *Early Institutions*, Lecture I.

<sup>2</sup> Ibid., Lecture XIII.

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in the latter case, were the heads of the families, had the right of advising and being consulted by the chief in all matters affecting the tribe. These, when the tribal chief developed into the monarch, came to be advisory councils constituted in obedience to royal will and pleasure. These councils, to realize the royal purposes of better taxation and easy government, expanded into the representative assemblies that we know.

### THE REPRESENTATIVE SYSTEM

The idea of representation, which has played such an important part in the history of the modern legislature, traces its origin to the Roman legal idea of agency and representation of principals through agents. It derived strength also from the idea of the mediaeval theory of corporations, that some members could represent others of the corporation. But the practice of representation would not have become so widespread in mediaeval Europe if it had not been used in the government of the later Roman empire and the early Christian Church. The ecclesiastical synod and council suggested the mediaeval parliament. The use of representative assemblies thus suggested by the practice of the Church, was adopted by the kings for purely royal purposes and not for the purpose of realizing popular government. Edward I called the Parliament into being for a royal purpose and not for the purpose of associating the people with the government of the State, just as in India, as soon as the Crown took up the government, the additional members of the councils of the Governor-General and Governors-in-Council of provinces were brought into being for the easier making of laws and regulations and for bringing the foreign rulers into some kind of contact with Indian opinion.<sup>1</sup>

### REPRESENTATIVE LEGISLATURES AS MAKERS OF STATES

Whatever its origins, the success of the representative system in England, the work it did for constitutional liberty and

<sup>1</sup> See Sir Charles Wood's speech in the House of Commons on the Indian Councils Bill of 1861 and Mr. G. N. Curzon's speech on the Councils Bill of 1892, Keith, *Speeches and Documents on Indian Policy*, Vol. II.

national progress, the very failure of representative assemblies on the continent of Europe and the subsequent reaction of enthusiasm in its favour after the French Revolution have contributed to the present position and prestige of the modern legislature. In England and in the period of the French Revolution, the national legislature has stood forth as the national assembly, making laws that integrated the body politic, unified the people and set them on the path of progress. It is not merely popular and free government that has been helped by the representative assembly and legislature. The very work of the making of a large modern State owes much to the idea and the institution of representation. The mediaeval English Parliament, constituting as it did a *communitas communitatum*, a microcosm of England, with the happy mixing up of the knights of the counties and the burgesses of the towns in the House of Commons, made not only for liberty, but the very unity of England. The English Parliament has, by the side of the king, stood out as the symbol and the instrument of the unity of England. Together with the Courts, it has brought about the legal unity of England. Although absolute monarchies unaided by representative assemblies can bring about national unity as in France and Spain and Russia, the unity is insecure, as has been proved by the civil wars of France and the course of revolution.

The representative assembly has become so important that even the Dictator, whether in Soviet Russia or Fascist Italy, cannot do without it. And the student of history will expect that a similar service to national unity may be rendered to India by representative institutions. The problems of the government of India, with the vast size and the vaster population, which obsess the minds of Anglo-Indian observers and which have persuaded the most scientific of them like Sir Henry Maine to speak of the population of India as an obstacle to representative government and of the "astronomical measures of politics,"<sup>1</sup> may, if history can be a safe guide in these matters, be resolved

<sup>1</sup> See an article by Maine, in *The Reign of Queen Victoria*, ed. by T. H. Ward.

by the device of representation. A great representative assembly numerous enough and sufficiently representative of the people and their varied interests will be one of the most powerful promoters of national unity—especially if it is allowed to legislate on a large and frequent scale. The size and population of the country, far from being an obstacle, seem to call for representation. And representative assemblies spread all over the country and organized on the wise and free principles of decentralization, will promote at the same time the ends of Indian unity and freedom.

The splendid history—splendid in spite of the numerous mistakes and shortcomings of the national representative assembly—which has contributed to the position and prestige of the legislature in modern times, is therefore due to the fact that the legislative assembly is also the representative assembly of the nation. It was therefore considered to have a peculiar authority and enjoy a peculiar prestige not open to the other parts of governments. Although this claim to supremacy must be considerably toned down now that the supreme administration is coming to be directly elected as in the United States of America, or indirectly elected by the people as in England, France and other countries, yet the fact cannot be ignored that in popular esteem the legislature is considered the most important institution of government.

#### CONSTITUTION OF THE LEGISLATURE

The constitution of the modern legislature is largely determined by the modern theories of democracy and of individualism and on the basis of universal suffrage. The old Hungarian maxim, *vota sunt ponderanda*, the fundamental principle of mediaeval constitutions, would sound strange and unusual to-day. But one may be allowed to doubt whether election by mere masses of men, divided according to towns or districts or cities, brings about a real representation of the people, who are, in fact, divided into groups and communities. If representative assemblies are to be representative of the life of the people, electoral con-



stituencies will have to be constituted according to the life of the people. Constituencies ought to be constituted on the basis of group and communal life. A village or a trade or professional guild may be credited with some communal life, but what communities give, the large city or district of modern times cannot command.

## ELECTORAL SYSTEMS

The organization of electoral constituencies according to locality would be the best system of national representation for localities like towns and cities and districts that have a common life and provided there is complete national union. Pure local representation, unqualified by representation of communities, interests, professions, becomes a mockery where complete political unification does not exist, as in India. The really representative assembly, like the mediaeval English House of Commons, should be a *communitas communitatum*, representative of communities, not of atomized individuals. But at any rate, organization of electoral constitutions according to local and geographical divisions rooted in the land and possessed of some common life and opinion is politically much superior to the system of proportional representation, which is indeed even a stronger projection of the theory of atomic individualism into systems of election than the system of local representation, and does not provide for representation springing out of community life. It is only as a corrective and supplementary device used to a limited extent that proportional representation can be employed.

To suggest inequality of representation may sound strange in these days of universal suffrage. The suggestion of Burke<sup>1</sup> may appear out of date that "nothing is a due and adequate representation of a State that does not represent its ability as well as its property, but that as ability is a vigorous and active principle and as property is sluggish, inert and timid, it can never be safe from the invasions of ability, unless it be out of

<sup>1</sup> Burke, *French Revolution*.

all proportion predominant in the representation." But universal suffrage has been proved compatible with Bonapartism and Caesarism. And after all, systems of election do not matter, except that they should not be allowed to defeat the very purpose of representation and inflict injustice, as when minorities fail to be represented in the national assemblies. The best system of universal suffrage can bring about only a virtual representative of the people as was that of the House of Commons in Burke's time. The best system of representation is only a rough and ready way to the representation of the people. "For no one," as Frantz says,<sup>1</sup> "can perfectly represent another."

#### REPRESENTATION AND LEGISLATION—MUST THEY BE UNITED?

The historical identification of representation with legislation has given legislatures the undue importance which they now possess. It is perhaps too late in the day to separate the two things from each other, but there is much to be said for the expedient obtaining in some of the Native States of India like Travancore and Mysore, of keeping separate the representative assembly, focusing the opinion of the people on the questions of the day, from the legislature, which is only a law-making organ composed of people qualified for legislation, carrying out into laws the ideas that passed the test of discussion in the representative assembly. Something can indeed be done in this direction, with the two-chamber legislatures which exist in most modern countries. The difficulties of the task of binding legislation with representation are obvious. To be adequately representative, a legislature must be fairly numerous and numbers do not conduce to expert or rapid legislation. The expedient of the Committee system, which is overdone in the U.S.A. and in France, where ministerial measures are reported on adversely by bureaus opposed to them, and the monopoly of legislation enjoyed by the administration as in England are palliatives of the modern system. But these expedients, however useful, prevent the modern legislature as a whole from being

<sup>1</sup> *Die Naturlehre des Staats.*

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useful. It is right that the executive should have a large say and a strong pull in the matter of legislation, for it is they that have to execute the laws and can best say what laws are required for the good of a country. But this leadership of the executive can be secured even if legislation were separate from representation.

### SEPARATION OF LEGISLATION FROM REPRESENTATION NECESSARY

Moreover there need be no fear that the representative assembly deprived of legislative functions would be a mere ceremonial institution. It would not merely stand forth as the national assembly voicing the demands of the people, but it would continue to perform all the non-legislative functions of the modern legislature. It would still continue to possess the characteristics which Burke allotted to the House of Commons: "a vigilant and jealous eye on executory and judicial magistracy, an anxious care of public money, an openness approaching towards facility to public complaint." It would still sift and sit in judgment on the acts of the executive. It may still be allowed to censure and overthrow an executive it does not want. It would still say what laws it wants for the country. It would still debate the great questions of foreign and domestic policy. It would still continue to be a parliament. What is required is that it should not also be an indifferent legislature. The union of legislative with parliamentary functions went well when legislatures were small and the problems few and simple on which they had to legislate. To legislate in a parliament as numerous as the English House of Commons, is to do the business badly or to let it be done by a few. The reform that is now being urged is that the real legislating part of the modern parliament should be separate as another institution, but intimately related to it. Then a parliament would be a parliament and the legislature would legislate.

### THE ADMINISTRATION IN THE LEGISLATURE

However that may be, the leadership of the administration in the legislature is an essential element of its constitution. A

rigid interpretation of Montesquieu's doctrine of the separation of powers has excluded the administration from the legislature in certain countries to the detriment and weakness of both. How can an administration get the laws it wants and it knows the country wants—none better than it—if it is not present in the legislature to persuade and justify. How can a legislature bereft of the chief representatives of administration exercise daily influence on the legislature by way of criticism of petty acts of executive *zoolum* which press more on the liberties of the people than the grand acts of unconstitutionality which are within the jurisdiction of the legislature. The marriage of the executive to the legislature leads to a fertility of legislation which could not be expected of a legislature only in distant contact with the executive. And the advantages of a harmonious relation between the two and partnership of each in the work of the other are of the highest political value. The actual government of the U.S.A. and of England illustrate the decisive advantages of the English system. But this union of the executive with the legislature must not lead to the view that the legislature to whom the parliamentary executive is responsible is the master of the executive. The ultimate responsibility of the administration to the legislature does not mean the ordinary sovereignty of the legislature. The legislature may not usurp the functions of the administration. Not only may it not, but it cannot perform the duties of the administration. In the wise words of Burke, "whenever the parliament is persuaded to assume the offices of executive government it will lose all the confidence, love and veneration which it has ever enjoyed while it was supposed to be the corrective and control of the acting powers of the State."<sup>1</sup>

#### THE SEPARATION OF POWERS

That the principle of the separation of powers is a wholesome principle and is the foundation of constitutional liberty is not open to doubt. But the proper use of it is secured by Madison's

<sup>1</sup> *Thoughts on Present Discontents.*

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formula,<sup>1</sup> that the whole power of one department should not be exercised by the whole power of another department, rather than by a rigid interpretation of Montesquieu's theory. Any other interpretation is only worthy of the Abbé Sieyès' of revolution.

### ORGANIZATION MORE IMPORTANT THAN POWER

Stress has been laid in the course of these observations on the legislature on the importance of its constitution and little has been said of its powers. This valuation is based on the history of the fortunes of legislatures. The secure success of the English parliament is accounted for by its national organization. But the incompletely representative character of the States-General of France—they represented only the royal bailiwicks and did not represent Burgundy, Provence and Brittany—the little legislative work they did, the *mandat impératif* which fettered the legislative freedom of the members, prevented them from being a power in the State and soon put an end to their very being. As Rossi<sup>2</sup> says, it is organization rather than power that is the more important need for a legislature.

### LOCAL GOVERNMENT

The government of a large State operates not only at the centre but at the circumference. A very important part of the structure of a large State is that of local government. The division of a government into central and local parts comes only with a large State, and it could not arise in the small city-states of the Greeks. The problem of the proper distribution of powers to its central and local governments is one of the great problems of modern politics. The large States of antiquity in what we have called the satrapial form of government reproduced in the provinces the absolutism of the central government. A large measure of decentralization no doubt has to go with the despotic government of a large State. The Turk, said Burke,

<sup>1</sup> Given in the *Federalist*, No. XLVII, ed. Lodge.

<sup>2</sup> *Cours de droit constitutionnel*, Vol. IV, 84th Lecture.

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governs with a loose rein, and Napoleon<sup>1</sup> said he would commence the prosperity of France with the communes. But centralization is the mark of an unfree but well-organized State, as was the Roman Empire and France in the best days of the *ancien régime*. A vigorous local self-government is the mark of the large State that is also free. The constitutional progress of England is based upon and is due to its free local institutions. Decentralized self-government is of the essence of the free government of the large State.

### THE FEDERAL SYSTEM

The needs of an energetic government at the centre and a free government in the parts of the large modern State are reconciled in Federalism. Not only American federalists, but French politicians have advocated federalism for the large modern State. "I agree more than ever," wrote Mirabeau, "that a great State can only be well governed as a federation of small separate States, the federal centre of which is a representative assembly with the monarch for president." The political future of the world, as two great students of politics, Acton and Sidgwick, prophesied, lies with federalism. It was the theme of the great critic of Bismarck's system of German unification, Constantine Frantz,<sup>2</sup> whose views, now that Bismarckism has perished by the sword which it took up, are once more coming into favour. It is the remedy for German *malaise* that is being offered by another great German political critic, F. W. Förster,<sup>3</sup> who thinks, with Frantz, that only by introducing the spirit and the institutions of federalism can Germany regain her lost position of being the central power of Europe. But a potent argument for federalism is the extension of the federal form of government in the British empire. It is federalism that suggests itself as the future form of government for such a large and varied country as India. But the prospects of Indian federation will be low, if it is viewed as anything but a distant prospect,

<sup>1</sup> *Maximes de Napoléon*, ed. Frederiks (Nijhoff).

<sup>2</sup> See his *Deutschland und Federalismus*.

<sup>3</sup> See his *Politische Ethik und Politische Paedagogik*.

or unless all the parts of India, including the Indian States, reach the same stage of political development in the direction of free and popular government. For federalism is in its origins and in its essence a form of free and popular government. But even before the institutions are introduced, the spirit of federalism can and ought to inform the government of the country.

POWERS, SEPARATE BUT UNITED

The institutions of government that have been described constitute the irreducible minimum required for the life of a State. The description has proceeded on the basis of the requirements of the free and progressive State. The freedom and progress of a State require that the institutions of government should be separate from each other. The history of the State shows the gradual increase of the cells of power from the original nucleus. The primitive king, who was commander, priest, judge and administrator, soon devolves one function after another to separate authorities and institutions. Concentration of power is the mark of a backward State, as distribution is that of a progressive State. "Simple governments are fundamentally defective, to say no worse of them," said Burke.<sup>1</sup> Division of power is the cause of progress in politics as in economics. It is in addition a safeguard to liberty. The freedom and progress of a State require that the legislature should be representative of the people, that the administration should be law-bound though free, that the judiciary should be the guardian of the law and of the constitution. But the division and separation of powers must be modified and controlled by the common purpose of the State and the interdependence of these powers on each other. The constituent parts of a State, says Burke,<sup>2</sup> are obliged to hold their public faith with each other and with all those who derive any serious interest under their engagements as much as the whole State is bound to keep its faith with separate communities, otherwise competence and power would soon be confounded and no law will be left but the will of a prevailing few.

<sup>1</sup> *Reflections on the French Revolution.*

<sup>2</sup> *Ibid.*



## GOVERNMENT AS MAKER OF THE STATE

### FORMS OF GOVERNMENT

Little reference has been made in this chapter to the old academic discussion of the three forms of government, monarchy, aristocracy and democracy. Not that forms of government do not matter. Pope's famous couplet—

“For forms of government let fools contest,  
Whatever is best administered is best,”

lays emphasis on the end of government and does not deprecate any discussion of the forms of government. For although fools may be allowed to contest about forms of government, good administration can be secured only by the form that could best achieve it. The antithesis between self-government and good government is false. For self-government would be worth nothing if it were not good government, and it is because self-government on the whole and in the long run is found to be a more efficient form of government than its opposite that people have struggled towards it. The form of government is certainly not an irrelevance. Form very often determines the functions of government. In politics as in art, form is function. Whether a government shall promote progress or protect liberty depends largely upon its form. But still a discussion on the forms of government, whether monarchy, aristocracy or democracy is the best form of government, is rather out of date and irrelevant.

### DISCUSSION OF FORM

It is out of date, for the question as to the source of political power has been answered by the modern tendency towards locating power in the body of the people. Where St. Thomas Aquinas and Rousseau agree there seems to be no call for doubt. No one believes now in what Pope called “th’ enormous faith of many made for one.” And Aristotle's well-known classification does not find room for such modern developments as the constitutional monarchy of England, the imperial monarchy of Napoleon III founded on universal suffrage, and the oligarchic republic of Soviet Russia. The discussion is also irrelevant,

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for, if the principle of Aristotle's classification is the comparative political goodness of governments, there is little to choose between the constitutional monarchy of England and the democratic republic of the U.S.A. The dictatorship of the proletariat in Russia is not very different from the dictatorship of the Tzars. Fascism has made possible a popular dictatorship. And what value, as Rousseau asked, has the doctrine of popular sovereignty when, except in small village-like republics, the people can be sovereign only at intervals.

### FREE AND UNFREE GOVERNMENTS

The true distinction between governments is between free and unfree governments. And freedom is secured by the supremacy of law, by the dispersion of power rather than by concentration of it, and by systems of checks and balances between political powers and institutions. It is not the popular source of power of the government of a State but the careful division and control of that power that conduces to free and good government.

### THE DIFFICULTY OF GOVERNMENT

The fact that the government of a State has to be divided among a number of institutions and powers produces a difficulty of prime importance. The political writers, mostly German, who have compared the State to an organism have had to meet the objection to their argument that the unifying and governing body which keeps the State together is composed of the same kind of individuals as have to be kept together and be governed. In the human body, for instance, the organizing authority which resides in the brain is composed of cells which do not do the same kind of work as the cells of the heart or of the stomach, and it is in direct and continuous contact with the other organs of the body. It is so built as to send orders which are generally immediately and mechanically obeyed by hand or foot. The contact between the brain and the other organs establishes a sensitive flow of action and reaction. Moreover, organisms are kept alive and bound together by the inter-

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action of the activities of different organs and by vital processes, which, as long as the organism is healthy, go on without let or hindrance, smoothly and harmoniously in a clockwork kind of regularity and inevitability. But it is not so with the State. The individuals that compose the State are not different in kind from those that compose its government and organizing authority. Governments stand outside and separate from the people governed. The contact between governors and governed is neither immediate nor continuous. The commands of government are not mechanically obeyed. Political obedience is largely the result of commands disobeyed and enforced by coercion and punishment and not the result of smooth and easy physical processes. Menenius Agrippa's fable of the body and the other members is only a tale pointing a moral, and does not place the human body and the State on the same footing. For a State can survive quarrels and disobedience to authority, whereas the body would immediately die of a quarrel between its members. The governing body and the State may change without bringing about the death of the State. The connection between the governing authority in an organism and its component parts is intimate, organic and physical, whereas that between the government of a State and its subjects is distant, discrete and social.

## THE DIFFICULTY OF FREE GOVERNMENT

It is this separateness and distinctness and otherness that make up the whole difficulty of government. How to constitute a governing authority which will organize the life and activity of a body of separate and autonomous individuals who go their separate ways, which are not always the ways of the community to which they belong, is one of the most important and difficult tasks set before men. When obedience to authority has to be induced rather than taken for granted, when authority has to be satisfied with what obedience it can get, when the centrifugal tendencies of the members of a State have a free and almost limitless field for their activity, when the contact between the

governing authority and governed is intermittent and distant, when the purposes of the individuals are not identical with or consistent with the purpose of the body politic, the constitution of a central organizing authority becomes laden with difficulties that are neither few nor mean. Especially is free government a delicate piece of machinery. A free government, made up as it is of balanced powers, said Burke,<sup>1</sup> is as intricate and as delicate as it is valuable, and must ever be a critical thing, and "to temper together the opposite elements of liberty and restraint in one consistent work requires much thought, deep reflection, a powerful and combining mind."<sup>2</sup>

The machinery of government is delicate, as it is not made with the hands of men, but is largely made up of a series of habits and conventions, the result of secular training. The machinery has to be worked by men of varying capacity for leadership and obedience. The delicateness of the machinery is largely due to the fact that the operators as well as the materials upon which it works are the same. The subject and the object of government are the same, i.e. men. To create an organization that will vivify the social life of man into fruitful activity is a task that calls for the highest degree of intelligence, patience and concentration. That government requires to be organized if it is to serve the individual and social ends of men was the theme of the thought and the action of that great servant of the State, the late Lord Haldane.<sup>3</sup> That government is comparatively easy and as a matter of course in modern times among civilized peoples must not blind us to the essential difficulty that lies behind its organization. The efficiency of modern government is only the result of hard work and never-ending endeavour. We have only to realize what it is in essence, i.e. the subordination of a large number of individual and autonomous wills to the authority of a single will, supported by sanctions in which a large number of the same individuals must themselves acquiesce, in order to accept the view that the organization of government is one of

<sup>1</sup> Speech at Bristol, 1774.

<sup>2</sup> *French Revolution*.

<sup>3</sup> See his *Autobiography and Selected Essays and Addresses*.

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the most splendid achievements, as it has been one of the most difficult tasks of human endeavour.

### THE NECESSITY OF GOVERNMENT

But however difficult the organization of government is, about its necessity there can be no manner of doubt. It is true in recent times, when government has become so much a matter of course, political writers and schools of them have arisen who, like Tolstoy and Gandhi, have doubted the necessity of government. It can therefore be neither out of place nor out of date now to insist that government is intended for man's well-being, for his very being indeed. No society of men, however small, can exist without an organization that will hold it up together. The very co-existence of a number of human beings with wills, desires and impulses towards self-realization calls for an organization that will subordinate the wills of individuals to the welfare of the community, that will settle disputes that arise between them as to their rights and powers, that will defend the community against attacks from without as well as from within—in a word that will keep the community alive.

Every society of human beings requires some such organization. The very animals require it. Ants, beavers, deer have leaders and guides whom the rest obey and rules and customs which they rarely disregard. And the most primitive kinds of society, Australian aborigines or African Negroes or Red American Indians, have some kind of government. It may be simple, with a few institutions, a few rules and a small number of rulers, as among the nomadic tribes of Central Asia; or it may be very complex, with a number of institutions with conflicting powers of varying jurisdictions, with authorities limiting and checking each other, with a numerous hierarchy of rulers, as among the peoples of civilization, ancient or modern. Government may just touch the life of a people with the utter and bare necessities of organization, or it may constitute itself the leader and guide and teacher of its people, intertwining itself with the daily and intimate life of the individual, and absorb-

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ing the life of the individual in the life of the State, as among the ancient Spartans, the Peruvians and modern Prussians. There have been countries in which, as Talleyrand puts it, "when society cannot create a government, a government must create society."

### GOVERNMENT AND NATIONAL CHARACTER

It is also true that systems of government vary with the character and history and traditions of a people. For it is obvious, as it was to Burke, that while a system of administration is attempted, entirely repugnant to the genius of a people and not conformable to the plan of their government, everything must necessarily be disordered for a time until this system destroys the constitution, or the constitution gets the better of this system. But it is possible to press this argument to the point of debarring certain peoples from the use of the higher and freer forms of government. For while it would be unnecessary and useless to transplant the details of certain forms of government from one country to another, the great ideas and institutions of government, like those of representative self-government, of decentralization, of a balanced constitution, are not difficult to acclimatize among civilized peoples. To think otherwise is to deny the possibility of political education and to stick fast in the Aristotelian theory of the essential and inescapable barbarism of certain peoples. For while it is not true that all peoples are born free, it is true that all peoples are born for freedom. And if they can and will order their lives accordingly, they can have a life of freedom and self-government. Government, said Burke,<sup>1</sup> is a contrivance of human wisdom to provide for human wants, and men have a right that these wants should be provided for by this wisdom.

### GOVERNMENT NECESSARY FOR LIFE

Whether simple or complex in mechanism, whether its duty for the people is light or heavy, whether it does much or only

<sup>1</sup> *Reflections on the French Revolution.*

the minimum, government of some kind there must be. The simple life cannot be so simple that it may do without government. Nor civilization so refined, nor culture so advanced, that they can dispense with it. The tirades of a Tolstoy or of a Gandhi are to be taken as operative only against the over-government of certain States or against a particular form of government rather than against all government. If they are to be taken as a statement of a theory of society, they are falsified by all the experience of history and by the social experience of men outside the State. Even the simple life of Mahatma Gandhi's Ashram at Sabarmati must have rules and an organization to keep people to it.

## GOVERNMENT NECESSARY FOR GOOD LIFE

The institutions of government are not merely necessary for the life of the State, they are necessary also for the good life of the State. They are aids that help men to advance on the path of progress. The course of progress has been largely determined by the forms of government. If modern society in the West has been educated out of old primitive institutions that would have been a clog on progress, it was on account of the formation throughout the West of strong centralized governments concentrating in themselves the public force of the community, and enabled to give to that force upon occasions the special form of legislative power.<sup>1</sup> The very principle of equality, the individualistic conception of human society and the unchartered competition among its members, which have gone so far in the western Europe of our days, Maine<sup>2</sup> attributes to the legislative activity of the Roman State. The institutions of government, therefore, are to be used consciously and thoughtfully to realize all the social purposes of man to all the extent possible to men. The work of Government for the State and Society is continuous and ever necessary. "Governments are only consolidated," says Talleyrand, "by a continued policy, and it is not only necessary that this policy

<sup>1</sup> Maine, *Early Institutions*, Lecture I.

<sup>2</sup> Ibid., Lecture XI.



should be continued—people should have the conviction that it will be so.” They are meant not merely to keep the State going but to speed its work for the good of mankind. The foundations of the State, the joints of social union, the power of social activity, have to be renewed from time to time. Social organizations, like all human things, have had to fall into a state of disrepair. Social solidarity and fellowship are liable to attack from material and moral causes. Modern materialism helped not only by the growth of luxury and the wide distribution of wealth, but by materialistic theories of social well-being, like the theories of socialism, tend to sap the solidarity of society. Intense egoism, which is independent of all theory, and self-love are among the most insidious evils that have ever threatened social unity. And the institutions of government, charged as they are with the duty of safeguarding the State, must constantly be throwing out defences and fortifications to defend Society and the State against enemies, which are more often of its own household and within the gates than without.

## GOVERNMENT MUST BE PROGRESSIVE

The institutions of government cannot be satisfied with the preservation of the *status quo ante* of the State. Their influence is not static, but dynamic. The Administration, for instance, cannot be satisfied with the mere passive preservation of law and order according to the ancient ways. The prevention of crime that might be committed and the prosecution of crime that has been committed are not the whole duty of government. It must find ways and means of positively reducing the volume of crime without emasculating the individual and without daring to make the citizen moral in spite of himself. It must remove all preventable temptations from his path, as those created by modern pauperism, bad housing and economic anarchy. Without trying to make the individual clean in spite of himself, it must make it easy for him to be so by a well-organized system of water supply, drainage and sanitation. Without drying up the sources

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of individual and social endeavour, it must help the advance of civilization and culture.

## GOVERNMENT AS LEADER OF THE STATE

The Administration must stand forth, in fact, as the leader and guide of the people in its struggle towards social progress. How much administration can do for preserving the unity of a State is proved by the work of Napoleon for France and for the countries he conquered. Wherever he went, Napoleon bound the country and the people together by a network of roads, broke down the barriers between classes by building up a unified system of law and judicial procedure based upon reason and equity and a system of efficient administration on the basis of *une carrière ouverte aux talents*. In the small island of Elba, during the period of his exile there, he had built an excellent network of roads and set the island on the road to prosperity. No ruler, ancient or modern, realized like Napoleon the value of roads as a means of building up the unity and solidarity of a State.

## THE MISSION OF GOVERNMENT

Not only to the Administration but to the legislature is set a mission of high endeavour. The present is no doubt an era of great legislative activity, but it is doubtful whether as many laws are passed as are required and when they are required. Not only in the United States of America but elsewhere are people, to use the expressive phrase of Colonel House,<sup>1</sup> "living under a government of negation, which is at more pains to do nothing with safety than to attempt desirable reforms which might disturb vested interests and alienate the voters." Nor can the judiciary be satisfied with a mere application of the law as it exists. Judicial legislation has no doubt its dangers, but it would be a dead judiciary which refuses to apply the law according to changing circumstances and conditions of life. Certainty and the principle of *Stare decisis* are no doubt

<sup>1</sup> See his *Intimate Papers*, Vol. I.

a prime necessity of judicial administration. But a judiciary that did not advance the cause of social progress in the careful and guarded manner required of such a body would be false to its high vocation.

Whichever institution of government it is, it must consciously and actively aim at progress. The problems of the modern State are many and difficult and complex. Its dangers are numerous and its existence precarious, for its enemies are more within than without. It breeds and nurses its own enemy, the large army of the have-nots, who strain their eyes with envy and hatred at the fineries of the haves. Thought, continuous and ceaseless thought, foreseeing and forearming is the foremost duty of the government of a modern State. A modern government cannot jog along and muddle through and blunder into right policy. Government is not an institution to preserve what has been, but an instrument to forge new and fruitful ways of life. The government of a State is a continuous and never-ending process. The State was not made once and for ever. It has been continually made from day to day, for, from day to day it gets into disrepair. A cultivated plant tends to revert to its wild form if the gardener does not water and manure and prune. And States will fall back into savagery if government and peoples do not keep watch and ward. "Dans le cours d'un long gouvernement," said Montesquieu,<sup>1</sup> "on va au mal par une pente insensible, et on ne remonte au bien que par un effort." The modern State is such a delicate fabric, so large in size, made up of so many and opposite parts and held together by such gossamer threads, that continued care has to be used by the presiding genius of the State which is government. The very weight of the modern State makes it liable to sag and crack from within, it need not wait for any attack from without. The work of repair and of fortification, of keeping active the instruments and institutions of progress, is continuous and never-ending. Eternal vigilance is the price one has to pay, not only for liberty, but for government, which is the condition of liberty.

<sup>1</sup> *L'Esprit des lois*, Liv. V, ch. 7.

## VII

# CIVILIZATION AND CULTURE MAKING THE STATE

*"Quand on prononce le mot civilisation on se représente à l'instant l'extension, la plus grande activité, et la meilleure organisation des relations sociales."—GUIZOT.*

### CIVILIZATION AND CULTURE NECESSARY FOR THE STATE

The State, equipped with a government, is ready to start on its career. It expands and extends itself. It helps man to realize and perfect himself. It makes it possible for him to contribute to that growth of religion and morality, of comfort and refinement, of freedom and of progress, that forms the glory of human history. First among the flowers that bloom in the garden of the State are the flowers of civilization and culture. The dependence of things on one another is a frequent phenomenon in the social as in the physical world. Higher forms of life are beholden to the lower; the cause is often maintained in its operation by the result; the product often becomes sustenance to the producer. Man makes the State, but is largely made by it. Similarly, civilization and culture would have been impossible but for the peace and security of life and property and liberty organized by the State. But on the other hand, the life of a State depends on the degree of civilization and culture attained by its people. The higher the civilization and the superior the culture of a people, the more highly developed is the State. A high degree of civilization means a high degree of political organization, of social solidarity, and a faster rate of progress. Culture strengthens unity, safeguards liberty and ensures progress. The history of the progress of civilization and culture is in fact the history of the progress of the State.

### WHAT IS MEANT BY CIVILIZATION AND CULTURE

Before, however, we proceed to trace the relations that exist

between civilization and culture and the State, it is well that we agree as to what we mean by civilization and culture. For very often in popular language the two words are indiscriminately used for each other. In politics, especially, where the language of the schools has to be the language of the people, it is necessary to define precisely the terms used and to give each word a special connotation. The derivation and historical usage of these words would seem to indicate the following differentiation in meaning. By civilization we mean that complex of habits, customs and institutions that produce a refinement of social life and manners and makes life in society pleasant and enjoyable. Material progress is its main means, but it does not exhaust it. Civilization is derived from the Latin equivalent of city and connotes the things that we associate with life in the city, especially life in the ancient city of the Greeks and Romans. It connotes a comfortable domestic life, lived in commodious houses, well appointed with furniture, served by a sufficient number of domestic servants and a varied and refined diet of food. It also connotes a bright and gay social life, with clubs and restaurants and shops laden with the adjuncts of comfortable and luxurious existence, well-built and well-lit roads, horses and carriages and other means of easy and comfortable conveyance. It owes its development to extensive international trade and commerce. Ihering has called the merchant the first pioneer of civilization, and has shown how the interpreter, who plays such a large part in social and international intercourse, was at first the commercial go-between, who settled the prices of goods.<sup>1</sup> Civilization, in short, means a refined social life. Culture, on the other hand, has more to do with the mind and the spirit. It means the cultivation of arts and letters and philosophy and science. It includes moral development as far as it has to do with the social relationships of man rather than with individual life. Culture also refines man, but it does this by taking the mind and spirit of man in hand, while civilization generally administers to his bodily comforts.

<sup>1</sup> *Geist des Römischen Rechts*, Vol. I, Sect. 16.

## CONFUSED DESCRIPTIONS

This is a more exact definition of civilization and of culture than certain current uses of the terms would allow. Civilization has been used to describe the whole life of a people as when Spengler speaks of the nine civilizations of history, and when we make use of the popular differentiation between western and eastern civilization. Professor MacIver calls civilization "the whole apparatus of life, consisting of custom and institutions, the complex and continuous mechanism of order, the devices and instruments by which nature is controlled, the modes of expression and communication, the comforts, the fineries and luxuries which determine standards of living and the economic system through which they are produced and distributed."<sup>1</sup> This description of civilization, therefore, is made to comprehend such things as government, science and industry, which indeed are now large and independent enough to have branches of knowledge of their own. Similarly, the Germans spoke of Kultur as if it included what we should call civilization. But the historical trend in language is towards specialization in the meaning of words, and scientific definition might do a great service to political thought and discussion if it defined and clarified the literary and popular usage of words rather than pour larger meanings into them. The Oxford *New English Dictionary* gives to civilization a specialized meaning to connote "a refined way of living," and it would seem best to restrict civilization to this meaning. The modern meanings of culture given in the *New English Dictionary* are "the training, development and refinement of tastes and manners," and is described as "the intellectual side of civilization." Matthew Arnold speaks of culture as being a "study of perfection" realized by means not only of the scientific passion for pure knowledge, but also of the social and moral passion for doing good, and as the acquainting ourselves with the best that has been known and said in the world. The definitions, therefore, of civilization and

<sup>1</sup> MacIver, *The Modern State*.

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culture with which we started seem to fulfil the scientific condition of differentiation, and at the same time keeps close to modern literary usage. It has also the merit of emphasizing the difference between two things that have been often confounded with each other, to the detriment of historical judgment and of international understanding.

### NOT ALWAYS FOUND TOGETHER

Civilization and Culture, no doubt, ought to go together, but they do not always go together. The Hindus were and are highly cultured, but they have paid little attention to the development of civilization in the sense in which we have used the term. The confusion between civilization and culture in connection with them has led to such expressions as Sir Thomas Munro's description of the Hindus of his time given in his evidence before the Select Committee of the House of Commons "as highly civilized as the people of Europe" and to such questions as Mr. Archer's "Is India Civilized?" Much of the misunderstanding between peoples and much national self-righteousness would be reduced if civilization and culture were known to mean two different things which ought to go together, but do not always go together.

### BUT DEPENDENT ON EACH OTHER

Although a high degree of culture may exist with a low degree of civilization and a high degree of civilization may exist with a low degree of culture, yet civilization and culture are dependent upon each other. Culture has served as an incentive for the development of civilization. The conversion of raw hides into leather, one of the landmarks in the history of civilization, by the use of mineral salt is credited to the Egyptians, whose religious convictions obliged them to preserve the bodies of their dead for the greatest possible time, and who therefore perfected the art of embalming long before any of their neighbours had even thought of such a possibility.<sup>1</sup> No people can be said to be

<sup>1</sup> Hendrick van Loon, *Multiplex Man*.



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really cultured if it is not highly civilized, although it is possible for men to arrive at a high degree of culture, neglecting the development of civilization. But no great culture can last if it is not supported by a high degree of civilization. Nor is highly developed culture a sign or a proof of political progress. Like the Hindus, the Celts of Ireland and England and France were superior in culture to their conquerors. Hindustan, in spite of the common dharma and culture given by Hinduism, did not obtain political unity, because it lacked what Sylvain Levi calls that "hierarchy of functions which a developed civilization would have given it." It is because among Hindus, in the expressive language of Lord Acton,<sup>1</sup> the State did not keep pace with the progress of Society that their very culture and politics have not endured.

## CIVILIZATION MORE NECESSARY FOR THE STATE

Of the two, civilization and culture, civilization is the more necessary and the more useful for the making of a State. The Red Indian, says Van Loon, "who did marvellous things in the field of mathematics, and was even a better astronomer than the Egyptians and the Greeks, never thought of the possibilities of making himself a wheel, and it may have been one of the reasons why he had lagged behind and fell such an easy victim to the men from the east."<sup>2</sup> "In a well-regulated State," says Richelieu, "there are more masters of the mechanical arts than teachers of letters." Some highly cultured people like the Hindus have despised civilization because it has to do mainly with bodily comforts. They have acted in the belief that if they concentrated on the development of the mind and the soul and treated with contempt the things of the body, they would reach the higher peaks of culture. But they did not realize that culture and civilization are hinged together as body and soul are bound to each other. The refinement of human life and social manners, far from being a distraction to the spirit, is an aid

<sup>1</sup> *History of Freedom*, review of Goldwin Smith's *History of Ireland*.

<sup>2</sup> Hendrick van Loon, *Multiplex Man*.

to mental and spiritual development. Refined modes of eating, polished manners of social intercourse, elaborate clothes, useful and ornamental furniture are not only an index of a refined mind, but by reducing the volume of bodily discomfort, release energy for the development of the soul. Material civilization is again the matter on which the mind of man exercises itself. As Sir James Frazer points out, "material progress in the arts and comforts of life is at the same time a sure sign of intellectual progress, since every implement, from the rudest club of the lowest savage to the most complex and delicate machine of modern science, is nothing but the physical embodiment of an idea which preceded it in the mind of man."<sup>1</sup> Without great material progress there cannot be complete and comprehensive intellectual progress. The development of civilization, says the scientist De Candolle,<sup>2</sup> owes most to intelligence, but at the same time civilization favours the intellectual habit. Civilization is not only the *motif* but the instrument of the music of culture.

#### CIVILIZATION PROMOTES CULTURE

The development of the aids and machinery of civilization is really a field for the activity of the mind of man. It gives that training and exercise which would fit it for the higher flights of philosophy, arts and letters. The history of modern scientific and industrial invention would show how much modern invention has been inspired by the purpose of making the domestic and social life of man more pleasant and refined. All inventions that have ever been made, says Hendrick van Loon,<sup>3</sup> serve the general purpose of assisting man in his praiseworthy effort to press through life with a maximum of pleasure in exchange for a minimum of effort. One of the causes of the unproductiveness of the Hindu mind in science till recently may well be attributed to this turning of its back in deep disdain on the development of civilization. This manichaeian contempt

<sup>1</sup> *Totemism and Exogamy*, Vol. I, p. 325.

<sup>2</sup> De Candolle, *Histoire des sciences et des savants*.    <sup>3</sup> *Multiplex Man*, ch. 2.

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for things of the body accounts for the arrested progress of the very culture of India, its arts and letters and sciences which only now under the impetus of western civilization are showing signs of revival. Moreover, the manners and modes of civilization are a school of moral discipline. Evening dress and the ritual of the dinner-table gloss and refine the animal function of eating.

Of course, it is possible to be over-civilized and for social refinement to be pressed beyond its due extent and for the body to be made comfortable to the point of flabbiness. But civilization does not mean the pampering of the body and the softening of the nervous fibre of man. Over-civilized societies like imperial Rome bore the signs of disease and death within them. The public baths, the costly dinners of a Lucullus, the euthanasia of senators, were not the marks of civilization, but of a vice-stricken society. It is good that civilization should be under moral control, that it should be disciplined by religion and subordinated to culture. But culture only stumbles and gropes when it elects to walk by itself and its path is not lit by the lamps of civilization.

## THE STATE NECESSARY FOR CIVILIZATION AND CULTURE

However that may be, for the birth of civilization and culture, the State is necessary. The State affords that peace and security of life, property and liberty which are required for their development. The close dependence of civilization and culture upon the State is proved not only by the fact that the history of civilization and culture everywhere begins with the history of the State, but by the fact that the character of civilization and culture of a people corresponds to the character and organization of its State. The civilization of Egypt, rare and precious relics of which have been spread before our eyes with great profusion in recent times, was the civilization of a royal and courtly despotism. It was a civilization of the Pharaohs and not the civilization of the common people of Egypt. Their culture, their arts, their literature, their sciences, were as stationary,

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as routine bound, as unintellectual as was their political character. "If," says Erman, "the Egyptian contribution to learning was of such little value on a subject like religion, which appears to them of such great importance, it is natural to suppose that on subjects of wider scope they have not rendered much service to science."<sup>1</sup> Some culture there was in ancient Egypt, but it was the perfection of the primitive and the archaic.

### GREECE

Greek political life, informed as it was by reason, produced a civilization and culture largely dominated by reason. The spirit of experiment which we find operating in its politics we find working as a spirit of fearless inquiry in its philosophy, its literature and its science. The comparative security which the unity and liberty of the Greek State allowed, gave culture the nursery for its development. The flourishing of culture in Greece proves the observation of Olive Schreiner,<sup>2</sup> that the organized, united nation is the only known matrix in which the human being can attain to full development, and a Plato, an Aristotle, a Shakespeare, a Michael Angelo, are as impossible without it as an eye or brain would be impossible without a whole human organism. The city-state allowed Greek culture to be popular. The appeal of Greek art as its politics was to the people. Homer's epics were sung to the people and Sophocles' dramas were played before them. In Athens political franchise carried with it a free ticket to the theatre. The Greek theatre, according to Arnold,<sup>3</sup> was as good an instrument of public opinion as the ecclesia. But the Greeks did not pay as much attention to the development of civilization as to that of culture.

### ROME

The Romans, who paid more attention to the development of civilization than to that of culture, were politically much superior to the Greeks. It is because the Romans, although

<sup>1</sup> Quoted in March Phillipps' *The Works of Man*.

<sup>2</sup> *Thoughts on South Africa*.

<sup>3</sup> *Cultur und Rechtsleben*.

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bad painters and indifferent writers and sculptors, were "past masters at the business of living," that they were so supremely successful as makers of the State. Among other things they did for the development of civilization, they converted the business of eating into a pleasant and leisured social function, for "they taught the world how to set a table with decency and grace, which is the first step in the right direction of changing the unpleasant process of feeding into the pleasant custom of dining."<sup>1</sup>

### CIVILIZATION AS MAKER OF THE STATE

Civilization and culture, which were produced in the peace and security organized by the State, make the State. We can trace the history of civilization and culture side by side with that of the State. As civilization and culture grow, the State also grows in size and stature. Savagery breeds only small and simple, discrete and scattered polities. The population of savage tribes is very small. The population of Australia was always restricted and never able to occupy the continent. In Tasmania Dampier<sup>2</sup> saw the Tasmanian savage in groups of twenty or thirty. The Bushmen of Africa were found in groups of ten persons. According to Hodgson,<sup>3</sup> the groups of primitive India were very small indeed. The wants of primitive tribes are few. Each family is self-sufficient, gets its own food through fishing or hunting or cultivation of the soil, makes its own clothes, builds simple houses, which are mere shelters from the rain and wild beasts, eats on the ground, sleeps on the ground, with no furniture except cooking-pots and hunting weapons. There is no division of labour, for the population is small and the needs are few. There is little trade or commerce. There are no towns or cities in savage society. All those bonds of social intercourse, commerce and exchange of goods, the acts of buying and selling, the give and take of trade, the intense social activity of towns and cities are

<sup>1</sup> Hendrick van Loon, *Multiplex Man*.

<sup>2</sup> Quoted in Letourneau's *Évolution politique*.

<sup>3</sup> Hodgson, *Primitive Culture in India*.

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all absent from savage and semi-savage societies. Their social solidarity is not great, their social and political organization is simple, because the life is simple. Property is little and there are not many forms of it. To protect their property not much government is necessary. The contacts between man and man being so few in a society which knows not the reactions of agriculture against industry and of towns against country, few disputes and quarrels arise, and those that do are of too simple a character to require any highly developed form of government. The love of life which in savagery could not be very pleasant and must be very precarious, not being very intense, crimes are punished more by private revenge than by public trial. Savage life being stationary, it does not require new laws and legislation, and is content to be ruled by Custom. Luxuries and the concentration of wealth that money brings in its train being absent, there are only a few classes, no long chains of hierarchical organization of society, no complex systems of administration.

## CULTURE AS MAKER OF THE STATE

The lack of culture still further lowers the social solidarity of savage peoples. A written language and literature gives rise to increased social intercourse and forms one of the most powerful bonds of social union. No doubt folk-poetry and songs handed down by memory from generation to generation do keep a primitive people together by recounting common joys and sorrows and reviving common memories. But writing and the form of the Alphabet have much to do with political development. The pictographic, hieroglyphic or cuneiform alphabet could not conduce to as much social intercourse or social solidarity as the more simple, the more subtle and the more easily learnt alphabet of the Phoenicians. Mr. H. G. Wells has shown how the invention of a scientific, clearly written and easily understood system of writing freed society from the cramping prisoners' atmosphere indicated by the hieroglyphics of China and Egypt and the cuneiform writing

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of Mesopotamia. It is to increase the rate of progress in Turkey that the Ghazi Kemal Pasha has substituted the easily learnt Roman alphabet for the cumbrous native form of writing. It is obvious that a small vocabulary cannot lead to great social intercourse. According to De Morgan, savages have had at their service only 300 to 400 words, while European languages contain 20,000 to 30,000 words. The peoples who speak the richer inflexional languages have in history dominated the peoples who spoke the agglutinative languages like the Semites who conquered the primitive Chaldeans, or the Accadians who conquered the Elamites, or the Aryans who conquered the Dravidians of India. It is not fanciful to suggest that the difficult Devanagari and the other native alphabets are a greater bar to social intercourse in India and to the progress of popular education than the laches of the British government. "A simple writing," says Richet,<sup>1</sup> "is the fundamental element of all progress." Even savagery would not have held its own but for its culture, however little and undeveloped it was. It is the intelligence of the primitive savage that helped him to contend against the forces of Nature, the ferocity of wild beasts, and the rivalry of his fellows. It was mind that helped the primitive savage in the struggle for existence and helped the fittest to survive. It was the mind of man that discovered the art of making fire, of polishing stone, of building a house and of domesticating the dog and other animals which helped him in the struggle for existence.

## CIVILIZATION AND CULTURE DEVELOP THE STATE

If from savagery we proceed to higher forms of social life, we witness the same dependence of State and government on civilization and culture. Nomadic life is slightly more favourable to the development of civilization and culture than savagery. The nomad has no home. The tent is his real home, and the appointments of the tent must be few and easily movable. Carpets and curtains and hangings, the divan, the armoury and

<sup>1</sup> Richet, *Abrégé d'histoire générale*, ch. IV.



weapons of the nomad are in some ways a little superior to those of the savage. He lives and eats on carpeted ground, he eats better cooked and more varied forms of food, he fills his time with song and dance and music, he wears more clothes than the savage. But his social life is still limited. Nomadic property is not varied in its form. It is generally restricted to pasture cattle, beasts of burden and horses. His occupation is war, interrupted now and then by the tending of his animals. For food he depends on the sedentary agriculturist whom he conquers. Cattle is the nomad's money. There are no great class divisions based on wealth, but there seems to be a limit to the amount of property in cattle. A little more trade and commerce there is among nomadic peoples than among the savages, but the trade and commerce does neither serve as a bond of union nor multiply contacts within themselves. For the intercourse is generally between the nomads and other nomadic or agricultural peoples. Towns and cities are an abhorrence to nomads, for with their free and roving nature they look like prison-houses as they did to the Germans described by Tacitus. The culture of the nomad is certainly superior to that of the savage, for they have not only a language but a literature. Poetry and song unite them into a social solidarity not known to the savage. But the political organization of such a people, with so few wants, with little trade or commerce, with few towns and cities, must still be simple. The government is that of a patriarchal chief, and war being their chief occupation, the chief instrument of government is the army. The government of the nomadic State generally acted only in periods of war. The judges of the nomadic State have to do mainly with crimes and with very few civil disputes. The taxes are generally paid in kind. There is little central government, the affairs of the nomadic State being looked after by the chiefs of each clan. Nomadic government has not ceased to be tribal.

## THE STATE BRED BY CIVILIZATION

It is only with civilized peoples that the history of the State

really begins. Social life is more varied, fuller and richer among them than among savages or nomads. Wants multiply incessantly. Division of labour is born of the variety of occupations and means of subsistence. Agriculture is accompanied by trade, commerce and industry. Society is divided into classes based upon the possession of wealth or difference in occupation. Intercourse between classes is lively and peaceful and profitable. Contacts between the members of the civilized State are frequent, and lead to disputes and quarrels about the rights of each and about the relationships of one to another. Property becomes varied in its form. Property in land exists side by side with property in movables. Money leads to concentration and accumulation and movability of wealth. It is civilization that extends property by increasing the proportion of the population that holds it and thus extends the basis of political power, and therefore the stability of the State. Towns and cities spring up in all directions and the standard of creature comforts tends to increase. It is not for nothing that citizen means the inhabitant of a city as well as of a State.

Family life and social intercourse are made pleasant and enjoyable. The home is not merely a shelter from the elements but is the shrine of family love and affection. The home of civilized life is a buttress thrown up by political man to defend the State against the ravages of time and the distractions of the *wanderlust*. The wigwam of the Red Indian and the tent of the Tartar tribe are symbolical of tribal home life. Civilization transforms the house into the home and the home is made beautiful and becomes a joy and a possession for ever. It is filled with furniture calculated to increase the comfort and orderliness and refinement of family life. Separate rooms are set apart for the different functions of life. Tables and chairs release men from that contact with earth which is the bane of savage and semi-civilized life. G. K. Chesterton once said that chairs and tables, by raising man so many inches off the earth, make him less of the earth, earthy. The grossness of the animal function of eating is relieved by the use of spoons and forks and

plates and table decoration. Fine linen and silk lighten the burden of clothes for the civilized man. Music adds to the charm of the home and is not the accomplishment of mere professionals as among the nomads. Books, pictures, artistic bric-à-brac are other instruments of culture and civilization in the home.

Social life outside the home is strengthened and made pleasant by a number of institutions. Towns and cities are scattered in profusion all over the civilized State. Public baths and shops cater to the comforts of social man. Theatres, concert halls, picture galleries bring the classes and the masses together. Clubs are the institutions where the social solidarity of different classes is maintained, while cafés and restaurants bind the whole people in a common union. Brightly-lit, clean and well-paved streets make life in towns enjoyable. A plentiful supply of good water and a good system of drainage and sewage are necessary for civilized life in towns and make social life easy, comfortable and desirable.

#### THE STATE DEVELOPED BY CULTURE

The culture of civilized peoples also aids social solidarity. Written language and literature binds a people more closely than mere spoken language. The poetry, philosophy and history of a civilized people are a common possession which draws them closer to each other as they go on growing. Academies, libraries and museums, universities, colleges and schools, spreading culture among the people, break down social barriers, reform social life in an atmosphere of peace and geniality and make social intercourse noble and manly. Napoleon looked upon the *Institut* he created as one of the supports of his government. As is the culture of a people, so is its State. Sir James Frazer believed that every people has its appropriate music and the difference between the creeds might almost be expressed in musical notation. Would it be fanciful to suggest that the domination of melody in Indian music is an expression of the pettiness of the Hindu State, while the harmony of western music testifies to the social solidarity of western

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peoples? Anyway, the part played by music in the political education of a people was realized by the greatest of the Greek philosophers. And it is a mark of the political and social progress of India that music, which till now was the monopoly of professional classes, is being cultivated in the home. Architecture is the index of the civilization and culture of the political condition of a people. Temples are the chief buildings of a religious people like the Hindus. In Dravidian India forming the beetling brow of a hill as at Tiruvanamalai or looming into view by the side of a river as at Madura, they dominate the life of the people. The architecture and painting of a people are an interpretation of its ideas. The persistent repetition of one idea as in a Dravidian *gopuram*, the rationalized simplicity of the Greek Parthenon, the inspirational tendency of the Gothic spire, the broad spaciousness of Renaissance buildings all flow from different streams and springs of thought.<sup>1</sup>

## CIVILIZATION AND CULTURE DEVELOP SOCIAL SOLIDARITY

The customs of civilization and the institutions of culture have always acted as powerful elements of social solidarity and unity. Civilization increases population and civilized States tend to extend their size. The Dutch rulers of the Malay Archipelago are preparing their subject peoples for statehood by introducing among them new kinds of food and methods of agriculture and schools. The population of the Celebes is increasing because the people are well fed, well clothed and well taught. Civilization makes social life complex and the social and political organization of a civilized State is multiform. The large and growing population, the division into classes, the variety and multitude of occupations, professions and interests, the differences in wealth and occupation, the rivalry between different interests, the reaction between towns and the countryside, between agriculture and industry, between the leisured and working classes, the varieties of forms of property, all these make the

<sup>1</sup> For a brilliant and stimulating interpretation of the influence of a people's philosophy on its art see March Phillipps, *The Works of Man and Form and Colour*.

business of the government of a civilized State difficult and complex. But material civilization also makes people much more dependent on each other than savagery. The divisions of labour and of occupation, the dependence of town upon country for its food, of the rural classes upon the industrial urban workers for their clothes, make the people of materially civilized countries much more bound to each other than the simple life of primitive society or of modern reaction. Savagery keeps people isolated, while civilization brings them together. The simple life of Gandhi and Tolstoy will keep people isolated, separated and independent of each other. It is a call back to that village polity which was never able to organize the unity of India. The hermits of the Thebaid and the Rishis of India lived the simple life, but hardly the social life. The simple life is unsocial life.

A large number of institutions, social and political, are required for the life of the developed State, and these must be thoughtfully related to each other so that they work harmoniously and to the profit of the State. The public force that will maintain the peace and the security of a large and motley peopled State must be large. A large and well-articulated hierarchy of officials is necessary. The judiciary will have its hands full with the business of deciding the disputes between individuals and corporations, which are brought into frequent and many-sided contact with each other. The administration of such a State is required to have a hundred eyes and a thousand hands ever ready to combat coming danger, ever ready to repair and build, to act as a national guide and leader of society. The growing wealth of civilization increases the taxable capacity of a people, and a complex system of taxation is the burdensome privilege of a civilized State. Legislation has to be frequent, for a civilized State is called upon to adjust itself to new conditions and needs, and new laws must ever replace old laws or out-of-date customs. A civilized State has to hold intercourse with other States, and the problems of international intercourse are not among the least difficult of its problems.

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Civilized peoples are expansive, and the waste places of the earth, peopled by tribes who do not know what to do with them, invite their immigration or conquest.

### THE COMPLEXITY OF THE STATE OF CIVILIZATION

Altogether the government of a civilized State is a complex and difficult business. Thought has to be applied incessantly to it. A civilized State is a work of art. Science can bring gifts of help to it. It is not fanciful to suggest, as does Hendrick van Loon, that the French who were the first to centralize their government quite naturally became pioneers in the field of long-distance transmission for the human voice. What indeed would become of the large modern State without the ideas and the institutions of organization that science has suggested? It is the railway, the telegraph and telephone systems, the large-scale industry, products of scientific invention, that keep the modern State together. Would modern democratic government be possible but for the printing-press? Philosophy and Science must aid its rulers with advice and guidance. The large State of modern times has to be governed and organized with knowledge and courage. It calls for the highest wisdom and the stoutest hearts. A State dedicated to civilization and culture is the great achievement of political progress. The State of civilization attaches hosts of lovers and admirers to it. A civilized State is not only progressive, but is the more stable and stronger-grounded State. As Burke says, "to make us love our country, our country ought to be lovely." Manners maketh not only men but States.

### HISTORICAL EXAMPLES

The work of civilization and culture for the State is proved by the historical experience of every one of the States known to history. The foundation of the State of Sumeria, perhaps the earliest known to history, was laid on civilization and culture, on a knowledge of writing and a life of towns and shipping. The Semitic Accadians who conquered them simply adopted

the Sumerian civilization and culture. It was as the Egyptians emerged from the Neolithic to the Bronze Age that they became a people and founded a State. The endurance of Egypt for about 4,000 years as an independent State was largely due to the resources of civilization which the government commanded and which every fresh exploration of Egyptian monuments discovers. The Pyramids and the temples, the towns and cities, the division into a class of leisured rulers and working classes, the mercenary army, the gold and silver treasures, were all so many signs and proofs of the stability, the endurance and the power of Egypt. Crete was a State that was built solely on its civilization. The excavations of Cnossus reveal a very refined civilization. Aqueducts and baths, pottery and textile manufacture, sculpture and painting, gem and ivory and metal and inlaid work, festivals and shows, bull-fights and gymnastic exercises, not to speak of women's fashions,<sup>1</sup> were some of the elements of that ancient civilization. But Crete, without the fortifications necessary for defence, bereft of power, military and naval, is an example of the folly of building a State solely upon civilization. Its flourishing existence, however, for about 1,500 years from about 2500 to 1000 B.C., shows how civilization keeps and holds a State together. Another example of a State that owes its birth as well as its death to civilization is Carthage. To her people, the Phoenicians, we owe the alphabet and glass. The wealth of commerce created the power of Carthage, but proved in the end its ruin. For this wealth bought her mercenary soldiers and her elected rulers bought the votes of the populace. The civilization of Carthage was not dignified nor stiffened by its culture, for Carthage knew no poetry nor art nor history.

## GREECE

The States of European antiquity were all of them built on the basis of civilization. They were built on the city, while the States of modern Europe have been built on the clan. While the latter have been more stable and expansive, the former were distin-

<sup>1</sup> Wells, *An Outline of History*.



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guished by intense political activity. If the State dominated the individual in the ancient city-state, it was because the State of the city came nearer to the individual than the State of modern times. Civilized and cultured Athens led the van of political progress. Sparta lagged behind, for she was comparatively rude and barbarous. Athens, the city of civilization, showed the way to the rest of Greece in daring constitutional experiments and fearless political progress. The speech of Pericles on the Athenians that died in the Peloponnesian war proclaimed to the world that Athenians were ever ready to die for their city, because it was so beautiful and so worthy of their death. The poets, the sculptors, the painters of Athens built up the political greatness of Athens as much as her soldiers and her statesmen. Alexander was able to secure the line of conquests he made from Persia to India with the cities he founded as he went along, which took his name and carried the memory of Alexander down to this day in the form of the Sikanderabads of the East. Hellenic civilization it was that kept the Selucid empire together for the short period of its existence.

## ROME

Rome, as she went conquering and to conquer, enriched herself with the spoils of all the civilizations and cultures that passed under her yoke. To start with, she was a city-state. The unity, uniformity and progressiveness of the Roman law were largely due to the fact that it was a city-made law. The Roman empire was an empire of towns and cities. Commerce lured her to her wars and her imperial expansion. The love of money, of oriental luxuries, of refined ways of living, led Rome to the exploitation of the world and the establishment of the most interesting and instructive form of government in the history of the world. The vast governmental organization of imperial Rome could not have lasted the long time it did without the resources of civilization that Rome commanded. Roman conquest and Roman empire would not have been but for her splendid and far-

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reaching roads, the viaducts and the aqueducts, the lighthouses and posts and the forts that the Roman legionaries learnt to build. The plutocratic government of the latter days of the republic and of the empire bemused the numerous proletariat populations with free gifts of *panem et circenses* in the great amphitheatres of her cities. It is true the breakdown of the Roman empire was due to the degeneracy of its civilization. This only proves that the vicious exaggeration of civilization is as perilous to a State as a deficiency of it.

## THE MIDDLE AGES

During the Dark Ages of Europe, neither civilization nor the State was safe. Civilization and culture together took refuge during that period in the Church. It was as civilization emerged from the clouds that the State gathered strength. It was with the founding of towns and cities, the establishment of industries, the making of roads and bridges, that the State of the Middle Ages became fully formed and stood out independent and separate from the Church. One of the first things done by the kings of Germany towards the making of a State was the building of towns. Henry the Fowler is known in history as the town builder. The brilliant court of the Holy Roman Empire was more than its Diet, the cement of union for the State. The modern State, in fact, begins its history with the town. Law and legislation first arose in mediaeval Europe in towns, especially in Germany. And one of the problems that confronted Germany when modern history began was to reconcile the welter of its municipal laws, and it did so by the desperate step of the reception of Roman law.

The city-States of Italy, Florence, Milan, Pavia, Bologna and Siena maintained their strength and prosperity and influence out of all proportion to their size and with the support of the splendid and brilliant civilization whose record illuminates the annals of the Middle Ages. It was because Venice held "the gorgeous East in fee" with her trade and commerce, her money, her palaces and art treasures, that she "was the safeguard of

the West." The cities of Belgium and Flanders, Ghent, Bruges Liège were able to hold their own against kings of France and Dukes of Burgundy, with the help of their arts and crafts and industry. It was the civilization of the cities of Flanders and Belgium that helped them to fight the imperialism of Philip II of Spain, and encouraged them to create the republican polity of modern Europe. In the growth of civilization in Europe one may trace also the growth of the social solidarity and political unity of the States of the West. As their material civilization grew, the States gained also in cohesion and strength.

#### MODERN EUROPE

The work that civilization and culture had done for western European States in the middle Ages was continued on a larger scale in the modern period. Science and industry take up the work of consolidating the European State. The invention of printing made easy intellectual communication between peoples and made possible the rise of public opinion and the prospect of democratic government. Science has given the modern State railways, telegraphs and telephones and facilitated its consolidation. Large scale industry, the product of scientific invention, has brought about the importance and power of the vast labouring classes. The large States of Poland, Bohemia and Russia owe their incomplete political consolidation in the Middle Ages, to the infrequency of towns among them, the few that existed being built by alien Germans, and to the absence of industry. Russia began to be a well-knit and progressive State only when Peter the Great opened the windows of Russia to the salubrious winds of western civilization. He realized that agriculture alone could never incorporate the State of Russia. He forced western industrialism into Russia and brought it into frequent commercial intercourse with Europe. He believed that the symbols of western civilization would in course of time bring in the spirit and forthwith decreed the shaving of the oriental beard and the cessation of the harem life of women. He brought the influence of western science

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and knowledge to bear upon the heavy intellect of his countrymen. He sent young men from the chief families of Russia all over Europe, to imbibe the learning and customs and habits of western civilization, so that on their return they could introduce them in their own country to accelerate the civilization and the progress of the State.

## THE WORLD OUTSIDE EUROPE

The history of oriental States and other States outside Europe also proves the important part played by civilization and culture in the making of the State. China substituted for the rule of numerous and petty States the rule of a single State and a single emperor about the year 1750 B.C. and bronze vessels of this period which still exist testify to the high degree of civilization which China had already reached. About this time also, during the time of the Sheng dynasty (1750-1120 B.C.), China began to have a common script. Iron weapons came to be used about 500 B.C. and soon after, in the time of Howang Ti, China became a single unified State. The stationary condition of China after the first few centuries was largely due to the absence of civilization proper. It was due to the absence of enough towns and cities, to the lack of industry by the side of agriculture, to the prohibiting of foreign travel and intercourse and the routine culture of the mandarins. The stability of the large States of Peru and Mexico was also due to the wealth and luxury they commanded. Quetzalcoatl (born A.D. 839), the maker of ancient Mexico, was a great civilizer and opened roads, built bridges, encouraged commerce, taught the people to work in metal and stone, built palaces and temples and abolished human sacrifices. The towns and cities of these American States, their palaces and temples, their roads and bridges and rest-houses and tanks (Yucatan was especially noted for these), were all institutions that promoted their stability and endurance. It was because their conquerors possessed other articles of civilization like iron, gunpowder, horses and a printed alphabet that they lost their

empire.<sup>1</sup> The great State of Persia could not have been held as long as it was but for its great road and postal systems.

The history of the re-formation of a number of oriental States in modern times also shows how necessary civilization and culture are to the making of the State. In the movement towards the political recovery of the East, Japan led the way and proved the success of the methods which it followed. The Japanese adopted western habits of social life, the practice of western trade in commerce and industry, the ideas and institutions of western political organization. So have Persia and the new Turkey. The young Turks, like the Japanese and the Russians before them, expected that the symbols of western civilization may in course of time introduce the habits and practices of that civilization and have decreed the adoption of European dress and the freedom of women, to the scandal of the custom-bound peoples of India. Observers of Japanese life at leisure have noticed that if the wife is in European dress the Japanese will allow her to walk beside him and will show her courtesy according to the European style, but when she is in *kimono* and *geta* she is still the oriental wife, a devoted slave of his, and must follow behind him.<sup>2</sup> So much influence have external symbols on the behaviour of man, not of course by themselves, but because they suggest to him a whole world of thought and action.

Western learning, science and political ideas have been imported wholesale into these eastern countries and they are all feeling the salutary influence of a new life-giving impulse. These eastern countries which are throwing their doors open to the habits and institutions of western civilization have done so under the conviction that they were necessary for the efficient consolidation and organization and progress of their States. They have all experienced a newer life and a richer life than they have ever lived before and a new spirit that spells victory and progress for them. A new discipline, which at the same time

<sup>1</sup> Moireau, ch. XXIII, Vol. IV, of *Histoire générale*, ed. Lavissee et Rambaud.

<sup>2</sup> Lady Lawson, *Highways and Homes of Japan*.

controls their old oriental self, is releasing new springs of action. And the experience of these progressive peoples of the East, as well as the history of Europe, proves that the extent to which modern peoples become civilized and cultured will indicate the extent to which they will strengthen and perfect the organization and secure the freedom and independence of their States.

## EAST AND WEST

There are some peoples of the East who do not believe in the salutary influence of western civilization. They take the dichotomy of civilization into Western and Eastern as one based on fact and on the inwardness of things. They believe that western civilization is for the West and Eastern civilization for the East, that Eastern peoples would be false to themselves, to their history and to their traditions if they gave up the customs and institutions of their civilization and adopted those of an alien brand. But this division of civilization into Eastern and Western is false and pernicious. It is false because it is not founded on fact. If civilization means a race or people or age, then we may speak of different civilizations as Spengler<sup>1</sup> does. And then there would be different kinds of western civilization as of modern civilization. There is little in common between the Russian peasant and the factory hand in the U.S.A., although both belong to the west. Nor is there more between the Indian ryot and the Chinese farmer, although both belong to the East. But if civilization means a refined manner of life, it can only be divided into different degrees and not into different kinds. This division is also pernicious because it is a bar to progress. Civilization is one and indivisible. Civilizations differ in degree and not in kind from each other. There are different grades and degrees of civilization. Civilization is one as its opposite savagery is one. Eastern savagery does not differ from western savagery. One touch of wild nature makes the savage tribes of Australia and Africa kin with the savage Kelts and the Bretons that roamed in England before civilization came to her shores.

<sup>1</sup> In his *Downfall of the West*.

Nor is the opposition of western civilization to eastern civilization based on historical experience. For if it were we should have no borrowings of the West from the East nor of the East from the West. The civilization of Europe has, however, been built with the spoils of Eastern civilisation. Mediaeval Europeans adopted many a habit and device of civilized life from the East through the Arabs of Spain. The making of the glass panes of windows which illuminated the grim rooms and recesses of the feudal castle was taught Europe by the Arabs. The practice of frequent baths, the refinement of food through spices, the use of the table cloth, and of new fruits and vegetables, came to Europe from the East through the Arabs. Carpets and hangings that adorned the home, silks and satins that beautified women, also came from the East. The inns and hostelries of Europe are the eastern caravanserais stabilized by the European love of regularity and made pleasant by the European love of comfort. The maritime discoveries of the sixteenth century and later contacts with new peoples and new countries have brought new customs and institutions and arts into western life that increased the variety and pleasure of social intercourse. The introduction of tea into Europe led to the establishment of a new social ritual that has served as a bond of social union. Coffee-houses formed one of the most important institutions of English life in the eighteenth century and played a great part in the political and literary life of England. The peoples of Europe and their kinsmen in America have never been ashamed of borrowing from the East.

#### INTERDEPENDENCE OF EAST AND WEST

This is the secret of their progress. "That which has most contributed to the greatness of Rome," says Montesquieu,<sup>1</sup> "is that the Romans have always renounced their own usages as soon as they found better ones among the peoples they conquered." The history of English civilization and progress begins with a conquest, the Norman conquest, which brought the rude, dis-

<sup>1</sup> *Grandeur et décadence des Romains*, ch. I.



united Saxons into contact with a more civilized and progressive people. And this was the experience of most of the States and peoples of Europe. And in the East Japan's greatness is due to "the welcome given to foreign ideas" ever since the days of the Great Reform of A.D. 645.<sup>1</sup> And one of the secrets of the political deficiencies of the people of India is their attitude of suspicion and distrust towards alien civilizations. "It would be difficult," says Sylvain Levi, "to find anywhere a people which tends so resolutely to the exclusion of the stranger." They have thought that by labelling them alien they had disposed of them. But they reject the customs and institutions of the civilization of the West, customs and institutions that have played a great part in the moulding of the western states, only at their peril. Mr. Gandhi's denunciation of western civilization in India is a call back to that village polity and culture which has never been strong enough to organize the unity of India. A capacity for admiring other people "is the characteristic of progressive peoples like the Germanic peoples, who possessed the quality wanting to all those that condemned themselves to stagnation and knew not how to admire."<sup>2</sup> *Nil admirari* is the motto of unprogressive peoples. China and Egypt, which lived only for themselves, says Richet,<sup>3</sup> condemned themselves to a life of numbing routine because they would not receive from the strangers stupidly labelled as enemy the teaching that would have regenerated them. These customs and institutions are not a mere decoration in the lives of progressive peoples, but are among the most important instruments of their progress and prosperity. By western civilization is not meant the passing fads and fancies of the civilization of the cities of modern Europe and America or the horrors of a vicious and degenerate civilization that strike the eye of its eastern critics. It is the enduring things of the civilization of Europe that have to be adopted by the peoples of the East who want to set themselves on the path of progress.

<sup>1</sup> Gubbins, *The Making of Modern Japan*.

<sup>2</sup> Gaston Boissier, *Revue des deux mondes*, 1867.    <sup>3</sup> *Abrégé d'histoire générale*.

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The lasting and salutary things of western civilization and culture are the property of the whole world. Beautiful and artistic and well-appointed and well-furnished homes, refined family life and manners, clothes suited to modern activity, social life equipped with all the improvements and conveniences furnished by modern science, clubs and restaurants strengthening the bonds of social union, railways and other important means of communication are among the things of western civilization which all peoples who do not wish to be left behind in the race of life should welcome. Especially to roads must India look for the upbuilding of its social and political life. The great peoples of history have been great road-makers, like the Romans and the French. The road binds the different parts of a State as even railways cannot. They are freer than railways and can go anywhere and everywhere. They knit the small village with the nearest town and the rest of the country. If the gulf which is widening every year between the city and the village is to be bridged at all in India, it can only be by the road. The fashion of railway development which caught hold of the Government of India in the middle of the last century accounts for the neglect of the road. The 60,000<sup>1</sup> miles of road now available are utterly inadequate for the purposes of India. The governments, provincial and central, must put forward before them the ideal that for every square mile of area there should be a mile of road in India. Only then can India be said to be supplied with that quantity of roads necessary for the making of a modern State. With a well-planned system of roads, especially village roads and with the telegraph, the telephone and the aeroplane, the problems of India presented by its size may yet be solved.

## FOREIGN CULTURE AND THE MAKING OF STATES

A foreign culture unites a people torn into bits by different cultures, and western science and western letters may unite

<sup>1</sup> According to the Report of the Indian Road Development Committee, 1928.

peoples who have been divided from each other by their own literatures. A Sanskrit academy may divide Hindus from Mussalmans, Brahmins from non-Brahmins in India, while an English literary association would bring them all together. What the English language and English education have done for the unification of India he who runs may read. There need be no fear that India will lose its individuality by the adoption of the customs and institutions, of the civilizations and of the culture of the West. None of the European peoples have lost their individuality by learning and adopting from the Arabs. It is true that, as Sir James Frazer points out, there is danger to primitive undeveloped peoples from their contact with the latest developments of the material civilization of the West. But no danger can come to grown-up peoples with a solid moral culture of their own to discipline and control the consequences of such an impact.

The civilization and culture of Europe acts as the buttress and support of the government and the constitution of the States of Europe. They are among the chief causes and sources of the strength and progress of the modern State. If any peoples desire to take their place in the line of progress and freedom, they must also adopt and assimilate those customs and institutions of civilization and culture that centuries of experience have proved to be necessary and profitable for the life and progress of the State. "Isolation," says Rudolf von Ihering, "is the capital crime of peoples, if the supreme law of history is community. A people who repels the idea of contact with an alien civilization, that is to say with education by means of history, has by that very fact lost the right to exist. The world has a right to its fall."

## VIII

### IDEAS AND THE MAKING OF THE STATE

"In principio erat Verbum."—JOHN I.

#### REASON AND THE STATE

The State made by government and developed by civilization and culture is now on a fair way to achieve its purposes. But government and civilization and culture are best able to do their work for the State when they are inspired by reason. Instincts, needs, and the facts of life, no doubt, determine the origin and the first steps in the life of the State. But if the State is really and thoroughly to serve its end its life and career must be influenced by reason. It is reason that distinguishes human from animal life. "Man having been made rational," says Richelieu,<sup>1</sup> "he cannot do anything but according to reason." It is reason that informs the life of the truly political man who is not merely a political animal. Full political life is the life not only lived in institutions but inspired by ideas.

#### THE PLAY OF REASON, MODERN

The play of ideas upon the making of the State is a comparatively modern phenomenon. In early States ideas did not play any great part. For the early State is ruled by instincts, and by institutions rather than by ideas. Not that primitive man was a mere animal. Frazer and Malinowski and Lowie show how much primitive customs were based on reason.<sup>2</sup> But it is only when man becomes politically self-conscious that he begins to think and argue about the origin and purpose and manner of government. It is only then that the reign of ideas commences. Primitive peoples have neither the leisure nor the energy necessary for political discussion. Their time and their energy are taken up with the business of building the foundations

<sup>1</sup> *Testament Politique*.

<sup>2</sup> See also Dawson, *Progress and Religion*, ch. IV.

and raising the structure of their social and political organization. They are busy building institutions and have no time for thinking ideas. Instinct and need, not altogether independent of ratiocination, find them the social and political arrangements they require.

#### POLITICAL THOUGHT, A LATE PHENOMENON

Political thought is born only among the peoples of civilization and culture, and that only after a certain degree of civilization and culture has been reached. And even among them the practice of political thinking or discussion is not common to all, nor even among those by whom it is practised does it operate in all epochs of their history. Although the reign of ideas begins early with the history of the great peoples of the world, it is a long time before purely political ideas came to be applied to the life of Society or State. Knowledge begins by being one, and it is comparatively late in the history of culture that different branches of knowledge are put forth. Religion was the first source of knowledge, and theology was at first the queen of the sciences. There has been, in the language of Comte, a theological age in the history of most peoples. The Middle Ages in Europe were theological, and their political thought was largely theological, and not merely because they were the ages of faith, but because culture after the eclipse of the dark ages was being reborn in this period under the aegis of the Church.

And there have been certain peoples whose pre-occupation has been always religious or philosophical and who have never reached the age of political reason. Among them it is religious and philosophical ideas that influence political practice.

#### HINDU POLITICAL IDEAS—PHILOSOPHICAL

Among the ancient Hindus religion dominated the life of the many, and philosophy was the mistress of the leaders of the people. The latter were dominated by a philosophy which may

be described as more or less pantheistic, or as it is the fashion to call it nowadays, monistic. The influence of pantheism on politics is seen illustrated in Hindu political experience. Many of the characteristic features of Hindu political society are to be explained by the principles of pantheism. The principle that all is God and God is all would seem to teach and impose a political unity that would be complete and thorough. It was so thoroughgoing a unity that it failed to unite. Real political unity is born out of the process, generally a long-drawn-out process, of unification. It is not by mere assertion of unity that unity can be obtained. Pantheism has asserted that unity exists in spite of all the divisions that may exist, castes, tribal customs, communal laws, political separation, for all these are mere Maya or illusion. Nothing need be done therefore to do away with caste, separate laws and customs and internecine warfare. For these did not impair the essential unity which philosophy asserted. What can the division between Brahmin and Kshatriya, the inequality between the twice-born and the Sudra, the ostracism of the Chandala matter, when all these, Brahmins, Kshatriyas, Sudras and Chandalas were absorbed in the higher unity of the spirit of deliverance? The unity of pantheism was also too comprehensive to be politically useful. The whole world of creation was one, and by the side of this unity national unity was a petty miserable thing to try to attain. The fact of the matter is that the unity of Indian pantheism or of the Vedanta as it is known in India was too absolute, too complete, too ideal to be of any use in the world of politics.

#### PANTHEISM AND PROGRESS

Nor is pantheism favourable to progress. There is no doubt a germ of progress in the idea that the individual can by force of his individual effort be absorbed in God, but the individual is already, when he begins to live, a part of God. And it is mainly by the negative process of divesting himself of his individuality that he becomes more and more like God. Everything that

exists is divine, for all is God. What progress can there be when, according to Emerson's interpretation of the Vedanta—

“ Shadow and sunlight are the same,

And one to me are shame and fame”?

Whatever is, is blest. The Vedanta is not inimical to individual perfection, but it implies that this can be attained without institutional perfection. Social improvement is not necessary for individual development. Man perfects himself in isolation not in society. The philosophers of India are ascetics asking for less rather than more of life. Suppression and extinction of desire is the moral ideal of the Vedanta. But that is only one half of the truth. What progress requires in addition to the suppression of the self, that is the lower self, which is only a preliminary process, is the harnessing of desire and will to the higher ends of man and society.

#### PANTHEISM AND LIBERTY

Pantheism is also opposed to liberty. It no doubt inculcates one freedom, the freedom of man from himself and absorption in God. The identification of man with God denies the personality of the individual: but freedom consists in the development of personality. Man's business, according to the Vedanta, is to free himself from the bonds of his personality with a view to his absorption in the personality of God which is the only personality allowed by pantheism if, indeed, a God who is also the world, and Brahman who is also the Atman can be called a personality. The freedom of man from dependence on and from the interference of others is as nothing, according to the Vedanta, when compared to the freedom of man from himself. For what is social inter-dependence or social equality in the eyes of the individual bent on individual perfection? They are nothing and count for nothing, in view of the larger freedom which man obtains by freeing himself from his own self.



INDIAN HISTORY AND INDIAN PHILOSOPHY

Thus it has been that the unity, progress and liberty of India have been prevented and checked by the pantheistic philosophy which held the leaders of ancient Indian society in its grip. We are not concerned here with the philosophical truth of pantheism in general or of the Vedanta in particular. We are concerned only with its practical implications and these have not been in the direction of promoting the unity, the liberty and the progress of the country. For pantheism, for all its comprehensiveness, aims only at expressing the relation of the individual to God through and by means only of the individual without the aid of society and the fellowship of man.

CHINESE POLITICAL IDEAS—MORAL

If ancient India illustrates the influence of philosophy on political conduct, China proves the effects of Morality, pure and simple and unqualified by other influences, on politics. No other people of history has elected to be ruled and influenced solely by morality. Religion enters little into the life of the Chinese beyond the ritual of ancestral worship.<sup>1</sup> Philosophy could not justify itself to this rigorously practical people wedded as none other to work. Their great teachers were moralists pure and simple. Confucius repudiated any power to work miracles and denied the occurrence of esoteric doctrines—a distinction familiar to Hindu India—in his teaching. No doubt he accepts the customs and rituals of antiquity, but to him they are of secondary importance compared to moral perfection. External religion, in his view, is inferior to internal morality. The teaching of Confucius is summed up in the maxims of morality, especially in the comprehensive one, "Do your duty." "Let the sovereign do his duty as a sovereign, the subject his duty as a subject, the father his duty as a father, and the son his duty as a son," said

<sup>1</sup> Cf. Montesquieu, *Liv. XIX*, ch. 18: "Les législateurs de la Chine firent plus; ils confondirent la religion, les lois, les mœurs et les manières: tout cela fut la morale, tout cela fut la vertu."

## THE MAKING OF THE STATE

Confucius to Ching, Duke of the Chi State.<sup>1</sup> He does not concern himself with the origin of being or of the end of man. The whole duty of man here on earth is the argument of his teaching. The object of the doctrine of Chinese philosophers is not the attainment of bliss in a future state. It is the attainment of perfection here on earth and that perfection is not ideal perfection, the perfection which saints and heroes aim at. It is the perfection possible to the average man. Confucian morality aims at the raising of the average not at the raising of a few lofty peaks of moral eminence. It is rational morality. Hindu asceticism and Christian saintliness are alike foreign to it.

## CHINESE MORALITY AND CHINESE POLITICS

Moderation, or the middle way, is the great principle of Chinese morality. Charity rather than humility, for perfect humility is possible only to saints, is what Confucius wants. Prudence rather than self-sacrifice, wisdom rather than saintliness, fraternity rather than equality, are the normal conduct of man according to Confucius. This is the morality of a positive realistic people. The Chinese have throughout history been an honest, hard-working, moral people. But they have never been touched to the finer issues of moral or religious fervour. To be distinguished was to be notorious according to Confucius.<sup>2</sup> They have never taken part in crusades, religious, or political, or even moral. Buddhism might have made them fervent but Buddhism could never put down their ancestor-worship or destroy their positive realistic spirit. The moderate morality of the Chinese colours their political life. Morality governed politics in the China of history. Government, according to Confucius, is justice and right. Promote the upright and dismiss all evil-doers was the advice given by Confucius<sup>3</sup> to make the people contented. To govern well, the ruler of a

<sup>1</sup> Giles, *The Sayings of Confucius*, ch. "Government and Public Affairs."

<sup>2</sup> *The Sayings of Confucius*, ed. by Giles, ch. on "Individual Virtue."

<sup>3</sup> Ibid., ch. on "Government and Public Affairs."

State ought to keep his family in order and above all to govern himself. If the ruler cherishes the principle of self-control, the people will be docile to his command, was one of the sayings of the Master.<sup>1</sup> Centuries before Gandhi taught that the personal morality of the rulers is the secret of good government of the State, the Chinese moralists required a moral life from the rulers of men. When famine, epidemics, earthquakes occurred, the emperor was invited<sup>2</sup> to examine his conscience and see if there was anything reprehensible in his conduct. The emperor should try to improve the conduct of his subjects, not by punishment, but by personal example. "If you, sir, can check your own cupidity," said Confucius<sup>3</sup> to a chief, "there will be no cheating." The State has to be governed as a family, of which the emperor is the patriarchal head, and the rules of state policy are the maxims of domestic conduct.

#### THE POLITICAL RESULTS OF CHINESE MORALITY

The limitations of politics governed by morality and nothing else are proved by the whole history of the Chinese people. The Chinese have done little for the development of social or political organization. Their social organization and discipline has in history been that of an extended family, fit only for the essential family occupation of agriculture and for the petty industry of the village. The Chinese have built up their State on the model of the family and the defects of Chinese political organization result from the extension of family organization to that of the State. The unity of the Chinese State is too simple, too little regulated, too little stiffened and hardened by the unity of groups and associations and corporations to last the shock of foreign attack or internal disorder. The government of China was too simple for the needs and requirements of a modern State. It was governed as a family, the decrees of the patriarchal emperor being carried out by a bureaucracy. No attempt at decentralization, no municipal

<sup>1</sup> Op. cit.

<sup>2</sup> Letourneau, *L'Évolution politique*, ch. VII.

<sup>3</sup> *The Sayings of Confucius*, ed. Giles, ch. on "Government and Public Affairs."

institutions, no hierarchy of authority was formed to organize the government of such a vast country. Chinese government particularly fought shy of the difficult art of diplomacy and the organization of national defence by repudiating foreign relations and international intercourse. The Chinese Wall proves the simplicity and futility of Chinese government. The Chinese State has never aimed at empire or even the foundation of colonies, though individual Chinese have established settlements all over the world. The Chinese State began to show signs of breakdown when the simple conditions of its family existence were overthrown by the establishment of contact with foreign States and by the introduction of the ideas of the West into the country.

The fate of China illustrates the futility of the attempt to make politics a branch of morality. That morality is necessary for the life of a State, that the laws of morality are as binding upon States as upon individuals, that no system of politics can be complete which repudiates the maxims of morality, are propositions to which we must give our assent. But morality cannot found a system of politics, nor by itself can it feed the life of a State.

#### JEWISH POLITICAL IDEA—RELIGIOUS

When ancient India tried to guide the State according to philosophy and China attempted to govern according to the moral idea, another great people of history, the Jews, made a fair attempt to build a State on the religious idea. The Jews believed that they were the people of God, that their ruler was God, that their laws were the decrees of God, taught them by Moses and the Judges and the Prophets. This conception that they were the chosen people of God did great things for their moral and religious education. At their best the Jews were the people of religion *par excellence*. No other people were so convinced of the personal overlordship of God over them or the immediate help of Providence. These ideas made of them a religious people but these ideas did not suffice

for the foundation of an enduring State. What need had such a people of earthly government when God was their ruler? What need had such a people of social and political institutions when their personal relation to God was the means and the end of their social education? What need had such a people of political liberty when they had the liberty of the children of God? What call was there for them to progress when God's laws gave them all the perfection they needed? The Jews were a religious people and nothing else. They were fanatics and enthusiasts of the religious idea. They have played no part in the history of liberty or of progress. They were content to lose the world for they had saved their souls.

#### THE POLITICAL IDEA BORN IN GREECE

Neither the ancient Hindus nor the Chinese nor the Jews did anything to inaugurate the era of pure political thought. The political thought they nursed, was by way of an aside in the course of philosophical or religious or moral discussion. Pure political thought began only with the Greeks. It was with the Greeks that politics as a special branch of human knowledge began its career. It was with the Greeks that the era of pure political discussion began. For it is among them that reason first begins to be applied to political inquiry. It was only natural that politics should begin with the Greeks. For, not only had the Greeks a penchant for politics, just as the natural penchant of the Hindus was towards philosophy, of the Chinese towards work, and of the Jews towards religion, the Greek State invited the Greek to live the life political intensively. Living this life so thoroughly, in full measure and overflowing, the Greeks in idea as in action glorified the political life. It was not this or that part of political life, this or that institution of government, this or that idea of politics, such as liberty or justice or progress, but it was the whole political life that the Greeks glorified. The Greeks developed the idea of the State.

## THE GREEK IDEA

The political idea of the Greek was the idea of the State. The political idea of the Greek was that the State was not only the one thing necessary for life but that it was the *summum bonum* of life. It was life itself. It would not be true to say that the Greeks did little for the development of political institutions or for the ideas of liberty, justice and progress. The Greeks did great service to political ideas and institutions but these, in their minds, only served the ends of the State. They did more for the independence of the State than for freedom in the State, more for political liberty than for individual liberty, more for the progress of the State than for the progress of the individual, more for social justice than for justice for the individual. "Not the liberty of particular men," says Hobbes, "but the liberty of the Commonwealth was the liberty of the Greeks." Law, according to the Greeks, as Gierke<sup>1</sup> points out, was a purely objective idea. Greek laws serve the State rather than the individual. The Greeks possessed no private law. The rights of the individual, the individual possessed not against the State but from the State. The State was the source and the end of the life of man. Plato exaggerated this pre-eminence of the State but even Aristotle could not free himself from the influence of the State as against the rights and liberties of the individual. Aristotle, as Gierke<sup>2</sup> reminds us, when he argues with Plato against community of wives, children and goods, does so not in defence of the rights and liberties of the individual but in defence of the true idea and interests of the State. Plato attributes a personality and independence alike to the State which is subversive of the personality and independence of the individual. The unity of the Platonic State is a terrible unity which requires the suppression of the individual family, individual property and individual liberty. In fact it is the State rather than the individual that the Greeks endowed with personality. Not even Aristotle's argument for

<sup>1</sup> Gierke, *Das Deutsche Genossenschaftsrecht*, Vol. III, Sect. 3.

<sup>2</sup> Ibid.

the separate life of the individual recognizes the personality of the individual. The individual is not the centre of political rights as he is according to modern political philosophy.

The State, according to the Greeks, is not the field for the exercise of the initiative and liberty of the individual. The State is to organize the individual and his life that the State may be great and prosperous. The regimentation of the individual by Plato's famous guardians was to be directed towards this end. The education of the individual is to make him a better citizen not a better man, and M. Janet<sup>1</sup> is right in accusing Plato of confounding education and politics. Aristotle, it is true, is less truculent and more tender to individual rights and liberties. But the Greek root of the matter was in him. The sovereignty of the State according to Aristotle was dominant, undisputed, and absolute. The State was prior to the individual in idea and order of precedence.

The idea of the State, great, glorious and triumphant, free, independent and dominant was the political idea of the Greeks. Certainly, this idea of the Greeks cannot be considered the greatest, the noblest or the most valuable contribution to politics. For if the State is only a means to an end, the ideas favourable to the liberty and the progress of the individual must be considered to be of greater value to mankind. But the work of the Greeks was necessary and precedent to the work done for the modern State in later times. The Greek idea made it possible for the State to be what it came to be afterwards. The State had to be made respectable before the individual could be thought of, for the liberty and welfare of the individual could not be safe when the freedom and prestige and position of the State were not made secure beyond all doubt or dispute. The State had to be emancipated before the emancipation of the individual could be attempted, much less achieved. The State had to be set on its own legs before the individual could be set on his. The State had to be set free from the dominion of Society as in caste-ridden India, of the family as in China and

<sup>1</sup> *Histoire de la science politique*, Vol. I.



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from that of a priesthood as in Judea. Politics was freed from the folds of philosophy, religion and ethics by the Greeks. They endowed the State with power and prestige, honour and beauty. The Greek political idea gave the State the right to a life of freedom and independence all its own. The Greek political idea it was that first made the real State. It gave the State its charter of life and liberty.

### ROMAN POLITICAL IDEA—LEGAL

From the Greeks the Romans obtained most of their political ideas. In the world of thought the Romans were content to borrow from the Greeks, proving their originality only in political practice. But the practical spirit of the Romans led them to interpret the Greek political idea to fruitful ends. They wore the Greek political idea with a difference. Their peculiarly legal mind from the beginning treated law subjectively and the individual as a subject of rights. The individual in the Roman State acquired a right to exist by the side of the State. The Romans introduced the distinction between *jus privatum* and *jus publicum*. But the Roman idea of the State was substantially the same as that of the Greek. To the Romans, as to the Greeks, the State was an end, not a means, the source of the rights of the individual, the be-all and the end-all of man's social existence. The Roman political idea was the Greek idea of the State, organized, realized in actual form and extended to imperial dimensions. The State, as a State, as an organism having a right to existence of its own as a subject of rights, as a personality with a right to exist and realize itself, was the lasting work of the Greek and Roman political idea.

### THE POLITICAL IDEA OF CHRISTIANITY

If the State had been left where it had been left by the Greek and Roman idea, it would no doubt have continued to exist and serve the social ends of man. But it would have been an incomplete and imperfect existence. Political life would have

been deprived of the richness and variety of expression of the later history of the world. The Greek and the Roman idea did much for the State but little for the members of the State. And even for the State itself, the loss of independence by the Greek States and the fall of the Roman empire showed that the Greek and Roman political idea did not hold the promise of salvation. To make a State strong and free and prosperous, not only the State as a whole, but the members of a State, as parts of that whole, had to be endowed with a life of their own. Not merely the State but the individual had to be given a right to life and to good life. This work for the individual was done by the political idea of Christianity.

#### THE IDEA OF THE INDIVIDUAL

Something had been done already for individual liberty by the Stoics, but it was on a small scale, and Stoicism was an aristocratic philosophy not a popular religion. But it was Christianity that displaced the classic idea of the State. Christianity, says Gierke,<sup>1</sup> by removing humanity's ideal from the earthly State into the kingdom of God, destroyed the foundations of ancient social thought. The State ceased to be the one unique social union. The individual under the protecting shade of Christianity burst forth as a personality with rights of his own which he could assert—an unthinkable idea according to the ancients—against the State. The individual became possessed of a separate autonomous and independent existence. The political idea of Christianity was to modify the rights of the State, its omnipotent authority, its omnicompetent jurisdiction by the rights and liberties of the individual. It was with Christianity that the individual came into his own. The way, indeed, had been prepared by Stoicism which, preaching obedience to conscience, had raised the banner of the right of the individual. But then the influence of Stoicism, as has been pointed out, was limited. Christianity brought the individual face to face with his God and thus gave

<sup>1</sup> Gierke, *Das Genossenschaftsrecht*, Vol. III, Sect. 5.

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him the right to live his own life and perfect his own personality. It taught him to believe that he had a life to live apart from the life he lived in the State. It taught him a set of virtues and duties which he had to perform in addition to the duties of a citizen. Christianity emancipated the individual from that dependence on and identification with the State that had been his lot in the world of Greece and Rome. The rights of human personality were first vindicated by Christianity against the claims of State and Society.

## THE IDEA OF THE CHURCH

This idea of the freedom and independence of the individual Christianity buttressed with the power of an institution. Christianity brought into existence an institution which it placed by the side of the State. It asserted the right of this institution, the Church, to a life and freedom of its own. The city of the Greeks and the Romans was confronted by St. Augustine's City of God. The Church in the political theory of the Fathers<sup>1</sup> acquired almost all the attributes of a State with its organic character, its unity in variety, and its legal right to obedience. Other social unions like corporations and religious orders also arose under the aegis of the Church. These institutions other than the State gave rise to the idea that the State was not the only possible institution for the government of man. The modern taunt that the Middle Ages were the era of liberties, not of liberty, is indeed its great glory. For modern liberty could not have been if mediaeval liberties had not flourished. Christianity thus reduced the authority and influence of the State by dethroning it from its position of uniqueness. The political idea of Christianity was that the State was only one of a number of possible social unions. The State was thus put in its place and sometimes even below it. The Fathers of the Church from St. Augustine onwards put the origin of States down to sin and the fall of man. At best it was compared to the human body or the

<sup>1</sup> Gierke, *Das Genossenschaftsrecht*, Vol. III, Sect. 5.

moon, while the Church was compared to the soul and the sun. The definite result of the working of the Christian idea upon the idea of the State was that the State came to be recognized as only one of the social unions which man had created to realize his purposes in life. By asserting and celebrating the rights of the individual and groups of his creation other than the State, Christianity made it possible for man to be something more than a citizen and for the State to be something less than Society.

#### THE IDEA OF LIMITED AUTHORITY

This comparative depreciation of the State and the assertion of its limited authority which runs through early Christianity and almost all mediaeval political theory, was part of a general theory of political limitations. Absolute authority in any sphere was essentially alien to the thought of the Middle Ages. The authority of the mediaeval State was limited. The doctrine of the unconditional duty of obedience was wholly foreign to the Middle Ages, says Gierke.<sup>1</sup> The saying of Isidore of Seville, "He is king who rules his people justly; if he does otherwise, he shall be no longer king," was essentially mediaeval. That God, rather than man, that divine law rather than human law, should be obeyed was the teaching of St. Thomas Aquinas, the representative mediaeval Churchman. Even Occam, the Imperialist, allows obedience to the emperor only *in licitis*. The doctrine of *plenitudo potestatis* which asserted the theory of the ultimate sovereignty of the State was held together with the doctrine of *potestas limita*. The idea of constitutionalism lay in the political thought of the Middle Ages. Gierke detects even the germs of the idea of popular sovereignty in mediaeval political theory. *Populus major principe* was a mediaeval maxim. St. Thomas Aquinas<sup>2</sup> recognizes that under God the people are the source of political power, and that, granted certain circumstances, they had the

<sup>1</sup> Gierke, *Das Genossenschaftsrecht*, Vol. III, Sect. 5.

<sup>2</sup> Ibid., Sect. 11, footnote 21.

right of cashiering their kings.<sup>1</sup> The idea of representation was another means translated into institutions of controlling the authority of the single ruler by the authority of the community. Law was not, according to mediaeval idea, an expression of the will of the State. Law was above the State and the ideal of natural law found only in germ in classical antiquity received a fruitful development in the Middle Ages.<sup>2</sup>

All this mediaeval idea of a controlled ruler and limited authority would be repulsive to modern political philosophy influenced by Machiavelli and modern German thought, although curiously enough it was the mediaeval Germans who, with Christianity, built up the mediaeval idea. All this mediaeval depreciation of the State may at first appear to be scarcely conducive to the building of the State. But as the best that can be done for the character of a man is to cure him of his conceit, it was well for the State that in the Middle Ages it was cured of the great conceit which it had acquired from the Greeks and Romans. For its health and progress it was well that it was cured of its classical pretensions. What the State lost in extension it gained in intensity. What it lost in jurisdiction, it gained in organization. The idea of a limited State was conducive to the freedom of institutions and corporations. The *Korporationslehre* of the Middle Ages taught a decentralized government. The representative idea conduced to free constitutional government. Political life as a consequence of the mediaeval idea was distributed all over the State. It was only under the influence of the political ideas and institutions of the Middle Ages that the large country State could have been built up and organized. Even the subordination of the State to the Church and the use of the State as a servant of religion, found in the theory of a St. Augustine, a Gregory VII and an Innocent III, served to moralize the State and gave it a higher purpose and motive than it had ever known before. The beatific vision of the city of God henceforth illuminated

<sup>1</sup> See *De Regimine principum*, ed. Baumann, Bk. I, ch. 6.

<sup>2</sup> Gierke, *op. cit.*, Vol. III, Sect. 11, 9.

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the path of the earthly city. The State became in the result greater and nobler by its end being transmuted from the baser metal of earth-bound desires and ambitions into the pure gold of a supra-terrene ideal.

### POLITICAL DISCUSSION IN THE MIDDLE AGES

Although the political work of the Middle Ages lay more in the sphere of institutions than of ideas, even in the latter sphere it did great and memorable work. Bryce's criticism that the Middle Ages were unpolitical is demonstrably unhistorical if we regard its institutional work and only less so if we regard the political discussion of the later Middle Ages.<sup>1</sup> Some kind of political discussion there had always been in the Middle Ages, but it was mixed up with theology and eked out by biblical authority. But towards the end of the mediaeval period in a Dante and a Gerson<sup>2</sup> and a Bartolus, we find political discussion freeing itself from subordination to other branches of knowledge. But it was not till the ages of Faith drew to a close that Reason, with its own laws and appeals, began not merely to inform but to dominate political argument.

### REASON IN MODERN POLITICS

The reign of reason in political discussion began under ominous auspices. For it was Machiavelli that inaugurated it. Machiavelli taught that political reason to be effective had to be divorced from conscience and morality. Machiavelli's great service to political science was that he brought about the separation of politics from theology and morals. The evil of his genius lay in the fact that he tried to make it independent of them. The ends of the State, according to him, justify the means of the State. Reason applied to the State produced the theory of reasons of State. Such maxims as that a wise lord ought not to keep faith when such observance may be turned

<sup>1</sup> See *The Mediaeval Political Theory of the West*, by A. J. and R. J. Carlyle, for a refutation of Bryce's dictum.

<sup>2</sup> Figgis, *From Gerson to Grotius*, and Woolf's *Bartolus of Sarsoferato*.

against him,<sup>1</sup> or that he<sup>2</sup> will be successful who acts according to the spirit of the times made the State independent of morality and law. The impact of Machiavelli's ideas on the making of the State resulted in the restoration of the old world prestige of the Greek and the Roman State. The Renaissance completed the work begun by Machiavelli. The Reformation was an ally of the Renaissance in this task. To help them in their campaign against the Church, the Reformers, especially Luther, strengthened the hands of the State. The Reformation produced the theory of religious despotism, summed up in the formula *cujus regio, ejus religio*. The wars between Protestants and Catholics threw both into the arms of the State. Catholic and Protestant States to save their faith from conquest strengthened the power and prestige of the State. The State, represented by the monarchy, became supreme over the parliaments, corporations and classes. The Bourbons and the Stuarts believed in the divine right of absolute power. Religion buttressed this power with the theory and practice of passive obedience. Secular political thought represented by Hobbes sanctified the absolute authority of government. Individual and corporate freedom went down before the steam-roller of monarchical despotism. Faced by the anarchy of religious wars, of party factions, which proceeded to all lengths and by international distrust, Hobbes preached the doctrine that in sheer self-preservation the powers of the State ought to be concentrated in the hands of the king. All classes of thought joined together in the worship of the State.<sup>3</sup> Philosophers like Bacon and Descartes and Spinoza, Lord Acton tells us, divinized that power. Mystics like Pascal joined in the glorification.<sup>4</sup> Monarchies and republics shared in the benefits conferred by the absolutist idea. These ideas of the absolutist State, however reprehensible, once more saved the State

<sup>1</sup> *The Prince*, ch. XVIII (Everyman's Library).

<sup>2</sup> *Ibid.* ch. XXV.

<sup>3</sup> Acton, "Freedom in Christianity," in *Essays on Freedom*.

<sup>4</sup> See *Thoughts*, Art. 5. 40 (*bis*), where he says laws ought to be obeyed because they are laws, not because they are just, as superiors have to be obeyed not because they are just, but because they are superiors.



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from perishing in the anarchy of the wars of religion and of international rivalry of the seventeenth and eighteenth centuries.

### THE GREAT STATE

One stream of reason thus led the State into the absolutism of the *ancien régime*. The State in the result looked as great, as powerful and as omnipotent as in the days of Greece and Rome. But tried, by the test of stability and of the well-being of the people of the State, the State of the seventeenth and eighteenth centuries was as defective as the Roman imperial State. But while the antique State was saved from the consequences of self-conceit by the institutions of Christianity in the Middle Ages, the modern State, which owed its prestige and power to ideas, was divested of some of its modern conceit by ideas themselves. Another stream of reason led to a corrective of State absolutism. The theories of natural rights saved liberty for the State. Grotius, like the Roman lawyers, drew from the ideas of international law a theory of natural rights which could be asserted for all men. Locke based free government on contract and started the career of modern political revolution. The doctrine of the natural rights of man received the stamp of authority and practical realization when the North American colonists of England set up an independent polity of their own. Rousseau's theory of social contract and of national sovereignty played like fire upon the highly varnished and inflammable wood of the State of Louis XV. Revolution preached in theory and realized with such tremendous success, was thus set up as the method of state-making. Revolution showed how necessary it may be to unmake a State in order to make it. The slow, gradual perfection of society and of the individual preached by Fénelon, Condorcet, Turgot, and Burke, had to give way to the quicker method taught by Rousseau.

### EQUALITY

It was thanks to the play of Reason upon politics that the ideas of Equality, Liberty, Justice and Progress came to

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influence the making of the modern State. Equality which did not exist in the antique State, with its antithesis of citizen and slave, or in the Middle Ages, with its conception of man only as a member of a group or a corporation, came into modern political philosophy with the conversion of men into individuals as a result of the war of ideas against the rule of institutions and corporations. In the war against the mediaeval Church, the Reformers had preached the rights of man. Equality was preached as the remedy for the tyranny of institutions and classes. Although the doctrine of equality when and as it was preached threw a movement of disturbance into the midst of European society, it has, in the long run, acted as a unifying force in the making of the modern State. It has converted subjects into citizens and made the people of a State look upon themselves as members one of another. It has thus contributed to the stability and the integrity of the modern State. While modern democracy is founded on the idea and practice of equality, a political system inspired by the idea of equality, provided such equality does not reduce men into atomistic individuals, certainly contributes to the strength and solidarity of the State. And even democracies would do well to bear in mind the warning of Montesquieu<sup>1</sup> that the spirit of extreme equality leads to the despotism of a single individual.

## JUSTICE

Connected with the idea of equality is the idea of justice, which has played a nobler and more fruitful part in the evolution of political and social progress. The German higher critic, Schweitzer,<sup>2</sup> working as a missionary among African savage tribes, found that no idea was more recurrent and more present in the savage mind than the idea of justice.

“O regina, novam cui condere Juppiter urbem  
Justitiaque dedit gentes frenare superbos,”

<sup>1</sup> *L'Esprit des lois*, Liv. VIII, ch. 2.

<sup>2</sup> See his *On the Edge of the Primeval Forest*, 1922.

cried Aeneas to Dido. The Hebrew psalmist, in almost every one of the Psalms, gives expression to the human hunger after justice. To deliver him and his people "in justice," "to guard him and his people against the unjust," "that his mouth will always proclaim the justice of the Lord," "that the power and the justice of the Lord go always together," are the prayers and the praises of this representative of humanity. The description which that part of the Roman world that understood Christ gave him in the person of Pilate's wife was that of "the just man." According to St. Paul, not mere "holiness of truth," but justice is the way of Christian life. Not only religion but political philosophy proclaims the importance of justice. A large part of the political discussion to which Aristotle and St. Thomas Aquinas devoted themselves was taken up with an analysis of the idea of justice. The social relationship between man and man in the modern State, between nations and nations, between the peoples of civilization and the so-called backward races, can be settled only by an appeal to justice. The idea of justice has been behind the Factory Laws, the Workmen's Compensation Acts, the Franchise Acts, the Land Purchase Acts of modern times. It explains largely the progress of modern International Law, the League of Nations, the theory of Mandates, the Locarno Pact, the International Court of Justice. It explains partially the spread of self-government in the British empire. It has thus influenced the delimitation of the frontiers of States, the constitution of the governments of others, and some of the institutions of national and international organization. The idea and search of justice helps to keep the modern State of capitalist and proletariat together. Even Napoleon had to recognize, *il n'y a point de force sans justice*. What is this idea of justice which has done so much for the progress of society and the State? Confining oneself to the practical reason and the practical use of justice one cannot go further than the Romans, who incorporated ideas into life and who defined and described justice as consisting in *suum cuique*

*tribuere*, in giving each one individual, nation or State, what is due to them; nothing more than what is due, nothing less than what is due to them. And by *suum cuique* is meant that which is necessary for the expression and realization of personality, whether of individual, or nation, or State. And in a world of personalities no single personality can grow at the expense of another. The life, as well as the good life of the State, is based on justice. Where the sense of justice does not prevail, the State is weak, becomes liable to dissolution, and loses its right to exist. The States that have fallen have fallen because justice did not prevail in them. *Fiat justitia, ruat caelum*. Let justice be, otherwise the State shall fall.

## PROGRESS

As necessary as the ideas of equality and justice is the idea of progress to the life of the State. It is not merely the good life of the State, but the very life of the State that requires the idea and the practice of progress. "It may be otherwise in another world," said Newman, "but here on earth to live is to change, and to be perfect is to have changed often." If an individual or a people is to live life efficiently, he or they must live it in consonance with the circumstances and facts of that life. A people condemns itself to stagnation and eventual death if it refuses to change. As Pascal puts it, "Notre nature est dans le mouvement; le repos entier est la mort." The great peoples of history, the peoples that have made States that endured were the people that were inclined towards progress. For if adaptation to environment is necessary for people to survive in the struggle for existence, that people that will adapt themselves the quickest and the easiest to their environment will realize their right to live. We have the authority of a scientist<sup>1</sup> for the view that the human species changes less slowly and more decisively than vegetable and animal species. To develop one's powers of mind and body, physical and intellectual, to improve one's control over nature and circum-

<sup>1</sup> De Candolle, *Histoire des sciences et des savants*, 1873.

stance, to grow in mastery over the external world, is the condition on which man enjoys the right to live on earth. Whether in savagery or in civilization, progress has been the law of life. The fate of stationary States, like the States of the East, that have been conquered or treated to subjection of varying degrees by other States, proves that a State must advance or recede. It cannot stand still. The idea of progress, of being stronger, freer, more prosperous than before, gives zest to the life of States as of individuals. To aim at living the minimum of life is a sure means of living below that level. Progress is not a luxury but a necessary of political life. The way to the stars is the way of life for nations as for men on earth.

#### LIBERTY

Not less fruitful in the making of the State has been the idea and practice of liberty. Liberty which had been the liberty of the State in classical antiquity and had been the liberty of institutions other than the State in the Middle Ages came in modern history to be the liberty of the individual, which is the main part of modern liberty. But whether in the individual or in institutional forms, liberty has played a great and important part in the making of the State. The history of the Greek city-states, of Rome, of the States of the Middle Ages and modern times, has proved that the State founded on liberty is in the long run a more stable and a better consolidated State than that which denies liberty. For liberty makes the people of the State interested in its life and well-being, distributes political power all over the State, and trains the people in all its parts in the business of managing the affairs of the State. If that great and only foundation of government, as Burke calls it, the confidence of the people, is to be produced, they must be given some part or lot in their government. Otherwise, one cannot command that liberal obedience without which, again in the words of Burke, "your army is a loose rabble and your navy rotten timber." The

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liberty of the individual makes him a willing and zealous member of the State. A State thus built and organized has certainly a longer lease of life than one founded on the concentration of political power in the hands of a few. A comparative history of the British and Roman empires will show how much liberty conduces to the very stability and integrity of the State. Despotism may last long, but only to the utter and ultimate detriment of the State. Liberty, although it makes government difficult, is in the long run a better maker of the State than tyranny.

### IDEAS NECESSARY FOR THE LIFE OF THE STATE

This survey of the influence of ideas on the making of the State shows the part they have played in the history of the State and the importance of ideas in the life of the State. For it is ideas that make the dead bones of the State live and march, as did the bones that lay scattered on the field of the prophet's vision. It is ideas that galvanize the State into action. It is ideas that determine how a State shall behave towards its members, how government shall govern and guide the lives of their subjects, how subjects shall regulate their public life. It is ideas that determine whether a State shall advance in the ways of perfection or remain bound to a peg or work in fetters. In fact the whole life and activity of States is determined by ideas. Sun-yat-Sen, the Chinese revolutionary leader, has placed on record<sup>1</sup> that the actions of his colleagues and the revolutionary party were paralysed by the old saying of Fu-Kuch under the emperor Wen Taing of the Shan dynasty, two thousand years ago, that "actions are difficult but knowledge is easy," and from the influence of which the Chinese had not been able to extricate themselves. Realizing the influence of ideas upon political actions, he set out to prove the opposite thesis, "Action is easy but knowledge is difficult." The relative activity of States, their progress, the range and scope of their action, are determined by the ideas which inspire

<sup>1</sup> In his book, *The Memoirs of a Chinese Revolutionary*.

them. Why some States are progressive while others are not, why some States go far in guiding and determining the private and social life of its citizens while others stop short of the absolutely necessary duties, why some States stretch out into new and yet newer forms of activity, is largely determined by the ideas with which the people, and especially the governing classes of the State, imbue themselves. The history of the world owes more to political ideas than it dreams of. It was a true saying of Ihering,<sup>1</sup> the German jurist, that the sole idea that man as such is free has done more for humanity than all the triumphs of industry. Nor can the corrosive influence of certain ideas be denied. "Even a kingdom of granite," said Napoleon, "can be reduced to powder by the *idéalités des économistes*."

#### LIMITATIONS ON THE INFLUENCE OF IDEAS

It is true that ideas do not work their will upon men without let or hindrance. It is true also that ideas cannot be adopted by men at their sweet will and pleasure. For ideas, though born in the mind of man, do not spring like Minerva from the head of Jove complete and perfect and ready. They are often conditioned by environment, are born of facts. The ideas of political philosophers often arise out of the facts by which they are surrounded, sometimes by way of consequence, sometimes by way of reaction. The ideas of Plato, the imperialist theories of a Marsilius, the views of a Gregory VII, the *Utopia* of Sir Thomas More, the *Leviathan* of Hobbes, the *Social Contract* of Rousseau, the Socialist theories of modern times, all arise as a deduction from the facts of life or as the result of an irritation produced on the minds of philosophers by the facts of the society in which they lived. Plato's ideas of government and social organization were to some extent suggested by some of the institutions of Sparta and largely called for by the chaos of political life in Athens, Syracuse and the other Greek cities he knew. The imperialist theories of the Middle Ages were suggested by the need for strengthen-

<sup>1</sup> *Geist des Römischen Rechts*, Vol. I, Sect. 9.



ing the authority of the secular power as it emerged from the tutelage of the Church in the early Middle Ages. And the Papalist views were dictated by the facts of the Middle Ages when the Church was the one institution which embodied real authority and government, the one power that was obeyed and appeared to possess the most capable organization and stood out for peace and order and progress. Popes like Gregory VII might be forgiven the political views that they enunciated at a time when Europe was involved in the disorders of feudalism and supported by the enfeebled arms of *rois fainéants* and of a Holy Roman Emperor. Sir Thomas More drew up his Utopia to distract his mind from the welter of political strife engendered by the introduction of Renaissance ideas into a society beaten and exhausted by the Wars of the Roses, and to suggest a way out of the religious discord that the Reformation had brought into being. His idea of a regimented State was plainly dictated by the disordered life of the time of the early Tudors. Hobbes built his Leviathan as a refuge from the strife into which England had fallen as a result of the extravagant parliamentarianism of his time. And Rousseau sketched the Social Contract as a solvent of the rigid autocracy of the *ancien régime*. Man was born free and is everywhere in chains, and therefore he ought to be free again, was the burden of his revolutionary song. The will of the sovereign one has been vicious, and therefore it must be displaced by the will of the sovereign many. The socialistic theories of modern times are certainly due, not only in regard to their origin but in regard to their idea, to the pauperism, to the general misery, the feeble defences of the industrial working classes. Capitalists are profiteering while Labour is being proletarianized. Therefore Capital must go and Labour must reign in its place, is the simple and perfectly comprehensible thesis of modern Socialism. Ideas are therefore not manufactured out of the inner consciousness of man, but are made by his mind playing upon the facts of his life and building conclusions from the premises furnished by them.

## IDEAS AND THE MAKING OF THE STATE

### OBSTACLES TO IDEAS

Another modification of the influence of ideas upon States and peoples is furnished by the influence of the environment of States and institutions working in the opposite direction. Not always, nor even often, do all ideas operate in a void nor are they written on absolutely clean slates. They have to reckon with the influence of other ideas and institutions, with individual character and social circumstance, with the civilization and culture of the people among whom they are born or are introduced. The idea of individual freedom cannot have plain sailing in a society dominated by the institutions of guild or caste. The idea of minimum interference by the State with the life of the individual will lead to stagnation among peoples who do not encourage individual initiative and free social combination. The idea of progress through legislation cannot come to complete fruition in a society dominated by custom. The sovereignty of ideas is not always complete nor always undisputed.

### IDEAS MAKE THE LIVING STATE

Making allowances for the operation of facts and circumstance upon ideas and for the genesis of idea from facts and circumstances, we must still insist upon the fruitful influence of ideas in the world of the State. It is ideas, we may once more repeat, that wing the State and peoples into action. It may not be otherwise, for man is endowed with reason which differentiates him and his activities from animals and their activities. Analogies have been drawn between the social life of man and that of the lower forms of being, and observers have been struck by the order and government that prevail among bees and ants. But all this social life of animals, however highly developed, is inspired by mere instinct, and not by free choice. As Arnold<sup>1</sup> points out, there are not different kinds of States built by ants and bees as are built by man. And among ants

<sup>1</sup> *Cultur und Rechtsleben.*

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and bees the State builds the people, while the people build the State among men. It is reason and idea that provide for the full social life of man. It is ideas that brought life into the mechanical mould of the State. Ideas make man. *Cogito, ergo sum*. We are what we think and the State is what its people think.

### IDEAS AND IDEALS

It is no criticism of the influence of ideas in the making of the State that most political ideas are ideals. It is the fate of human ideas that they are rarely realized or are imperfectly and brokenly achieved. Equality and justice, liberty and progress have never been perfectly realized on earth. For in the very process of achievement new problems and new denials of the ideas come into view. Equality led modern society into the tyranny of capitalism. It is hard to reconcile perfect equality with perfect liberty. Progress has not always been all round and all along the line. The imperfect realization of man's ideals is, however, no argument for denying them. Ideas, said Lord Acton, are never realized, but the pursuit of them determines history. The quest of the Holy Grail is never ended, but it keeps man alive. We may not be sure of entering the city of God but it is good to take the road to it.

## IX

### THE STATE MADE BY INDUSTRY

"While agriculture favours conservatism and aristocracy, Industry tends to progress and democracy."—ROSCHER.

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#### A NEW FORCE

The factors and influences that we have been considering so far, religion, custom and law, social and political institutions, civilization and culture and ideas, have made the State of history. But in recent times there has appeared a force which is shaping the modern State into moulds and forms not known before. This force was unknown to former ages. It has come into operation only in recent times. This new force which is transforming the State out of its former self is Industry. This is not the first time that Industry has appeared as a social force influencing the making of the State. Industry as a source of wealth by the side of land and agriculture has appeared in all ages of the world. Every civilized age and every civilized country have benefited by various forms of Industry. But the notable thing about modern Industry is that it is organized on a large scale and has attained a size unknown and undreamt of before. Modern inventions and large-scale manufacture have produced a revolution in the organization of Industry. Large-scale production of goods, the employment of great masses of labour and the organization of huge manufactories, the accumulation and concentration of vast capital in the hands of a few possessors are the signs and accompaniments of the great Industrial Revolution which, beginning in England towards the end of the eighteenth century, has now spread its conquests over the whole of the civilized world. It has generated political consequences of the greatest importance.

IV 3

#### INFLUENCE OF THE OLD INDUSTRY

The influence of Industry, it is true, in the making of the State

is no new event. But its influence before the Industrial Revolution was petty and on a small scale. Together with its sisters, trade and commerce, Industry before now has affected to some extent the making of the State. Industry has before now contributed to the extension of the State in size and to its growth in population. The expansion of Athens into an empire and of Rome was largely caused by the growth of trade and commerce and industry. Not only external expansion but internal integration has been helped by industry and commerce. They have created the towns and cities that are the nerve centres and ganglia of the civilized State. Towns have been the centres not only of progress but of freedom. Industry has, according to Roscher,<sup>1</sup> helped the cause of freedom much more than agriculture. And as Rossi<sup>2</sup> would have it, civil equality can be established only when movable property has reached a certain development. The industrial and commercial states of Flanders, of Belgium, and Germany and Italy were the centres of political freedom in the Middle Ages. Industry has embodied the spirit of progress and democracy while agriculture stands for that of conservatism and aristocracy. The political backwardness of most eastern States is partly due to the almost exclusive dependence of their peoples on agriculture, while the Phoenicians and the Carthaginians owed their early prosperity and decadence to the spirit engendered by trade and commerce. Industry certainly makes political life more active. Industry has thus played some part in the making of the State throughout history.

#### MODERN INDUSTRY

The political results, however, produced by modern Industry are so great, so vast and so far-reaching that they are moulding and transforming the State out of recognition by history. The wealth it produces is enormously larger than the wealth that trade or commerce used to produce. It is vastly increasing

<sup>1</sup> Roscher, *Nationalökonomie des Ackerbaues*, Sect. 20.

<sup>2</sup> *Cours du droit constitutionnel*, Vol. I, Lect. 17.

the population of modern States. It concentrates large masses of people in the cities it has created and as a result of this concentration, it has taught the labouring classes the power of organization and of agitation. The working classes, especially the industrial working classes, have become a power in the modern State. Labour is said to be coming into its own and by Labour is meant the labour that is in factories. Modern democracy is generally supposed to be composed of the working classes. The masses of the working classes, their organizations, like the Trade Unions and the Syndicats, dare to dictate to the government of the day. Through instruments like the general strike, Labour threatens to bring government to its knees. While Labour is a power at one end, Capital claims to be another at the other. The modern State made by Industry is governed by a plutocracy and a proletariat. Industry represented by Capital or Labour is the power in the modern State. It sometimes claims to be the State. The owners or directors of the capital necessary for the modern large-scale Industry have displaced the old possessors of power, the land-owning classes. Land has ceased to be the most important source of wealth, modern Industry shutting it out of all regard. Industry which has reduced the importance of land has begun to question its right to exclusive political influence. Industry has become so politically important that it is now trying to displace land as a foundation of the State. An attempt is now being made to build the State on the sole foundation of Industry.

### INDUSTRY AND ITS POLITICAL PHILOSOPHY

The attempt to build a State on the foundation of Industry is seen not only in the higher value given to it by statesmen as a source of wealth and power, and the larger place it fills in their minds and policies, but in the theories of social and political reconstruction that have a vogue in modern times and are being put forward for popular acceptance. The whole Socialist and Communist programme of the twentieth century is an

attempt to found the State upon Industry. Socialism and Communism are essentially industrial theories. The value of land is either minimized or neglected in their programmes. It is only as a means of strengthening their propaganda among the agrarian classes that Socialist parties take land into their schemes. The Social Democratic Party of Russia did not take the agrarian classes under its wings till 1905, about twenty years after it was founded, and admitted them by promising confiscation of the property of the larger land-owners. Although Socialists and Communists take land and agriculture into their cognisance, they do so only by reducing land to the position of industrial raw-material, like cotton, and the cultivation of land to that of an industrial process like the making of nuts and bolts. Land to them is a subject of use, exploitation and exchange just as much as the materials and products of Industry.

#### INDUSTRY AS BREEDER OF SOCIALISM AND COMMUNISM

Modern Socialism and Communism owe their origin to modern Industry. They are born and bred of it. Their theories and programmes contemplate the application of the methods of industrial production to the organization of society and the State. The production of modern wealth is organized by large concentrations of capital, machinery and labour. Joint stock enterprise carries that concentration to a certain limit. Trusts and monopolies, legal or virtual, carry it a step further. Why should it not be carried still another step further again? If the cotton or the sugar that a country produces for itself and for export could be manufactured by the capital of a large number of shareholders, why should not the whole body of citizens be made the shareholders and the enterprise be guided and directed by government? The concentration of capital is necessary for the production of wealth on a large scale. One Capitalist, as Karl Marx<sup>1</sup> puts it, always kills many. What can be more profitable than the concentration of all the capital of a country in the hands of a single management and the

<sup>1</sup> *Capital*, Eng. trans. ed. by Engels, Vol. II, ch. XXXII.



advantages of large-scale production, the saving of capital, reduced cost of production, cheaper prices, prevention of sickly and half-baked enterprise, drilled and regimented labour, can be reaped to a sublimated degree if there were only one capitalist and only one producer, namely, the State! And there would be additional advantages. The evils of competition would be no more. There would be no longer differences in charges for the same kind of work, no more quarrels between Capital and Labour, for there would be no more individual capitalists; and strikes would be treated as offences against the State; and there would be no more lock-outs, for that would mean the total cessation of the industry, not its temporary stoppage as it means now, when there is more than one centre of the same industry. Industrial peace will thus be secured by the suppression of so many centres of possible industrial strife.

Modern Socialism has clearly risen out of modern Industry. The hatred of individualistic Capitalism, which is one of the cardinal doctrines of modern Socialism, arose among the labouring classes earning their subsistence wages in the modern factory. The Marxian antinomy between Capital and Labour is revealed only in the large-scale industry. Socialistic theories have been propounded ere now. Plato enunciated some, the Christian Fathers and mediaeval mystics drew up others. But these theories were coloured by the preoccupations and ideas of their makers. Plato's was influenced by the Spartan experience and by his idea of the State as a means of human perfection. The Christian Fathers' ideas were influenced by the ideals of Christianity, charity and peace. But modern Socialism, which now sways the minds of men, is industrial in its origin and industrial in its ideals and industrial in its methods. Its ideal is that of Industry, that is, the maximum production of wealth. Its aim is frankly materialistic. Karl Marx's theory is one of sheer materialism. It was born out of the industrialization of the nineteenth century and aims at the better production of material wealth. Its fundamental

principle, the denial of individual property, is suggested by the distributed and divided proprietorship of the shareholders of a modern industrial enterprise. And the concentrated capitalistic wealth of industrialism showed Marx that the transformation of capitalistic private property, already resting on socialized production, into socialized property was an easy process.<sup>1</sup> The methods of modern Socialism are purely industrial. It tends to organize the State and society as if it were a cotton or hardware factory.

The political theory of Socialism is deduced from Industry. Its social and political organization is industrial. Workers in a factory are the predominant partners in an industrial enterprise. For Labour, according to the industrial theory of economics enunciated by Adam Smith, is the source of wealth. The concentration of large masses of men in the modern industrial factory and their government and discipline by means of the wage, suggest to Socialists the possibility of organizing modern democracy by means of the State dole and legislative favours. The free schools, the mid-day meals, and the other benefits of State Socialism are the modern counterpart of the *panem et circenses* of the Roman empire. The industrial labouring-classes concentrated in great towns, conscious of the power which the massing of great crowds produces, are considered to be the most important part of the population of a State. In socialistic political theory the proletariat is the source of power in the State. The dictatorship of the proletariat is Karl Marx's method of democratic government. In a modern industry, the managing directorate, whether using its own capital or handling the capital furnished by others, and the wage-earning workers face each other. The middle classes, although they furnish the capital of so many industrial enterprises as shareholders, are invisible. Therefore in the socialistic State political power is divided between the government and the industrial working classes, the middle classes and the workers on the land being of comparatively little

<sup>1</sup> Cf. *Capital*, Vol. II, ch. XXXII.

account. The war against the bourgeoisie is one of the fundamental principles of Marxian Socialism. To Lenin, the Russia that mattered was the land of the workman and the petty peasant.<sup>1</sup> The strike is the industrial method of solving the problems of social intercourse and revolution is the instrument of political progress indicated by Socialism.

## RUSSIA AN EXAMPLE

This view of the intimate and immediate connection between modern Industry and Socialism as an economic and political theory is proved not only by the history of modern socialistic schools of thought. Every one of the statements advanced in support of this view is proved by the history of the Revolution which fifteen years ago inaugurated the first socialistic State of modern times. The course and results of the Russian Revolution illustrate the truth of this view of the intimate connection of modern Socialism with modern Industry. The object of the Russian revolutionaries, as declared by Lenin and the other Bolshevik leaders against the revolutionary theories of the Liberals, the Cadets and the Mensheviks, was economic rather than political. The abolition of individual capital, the extinction of the middle classes, the production of wealth by the State were the objects aimed at by the party which organized the Bolshevik Revolution of 1917. The overthrow of the *ancien régime* of the Tzars was only a means to that end. The Bolsheviks would join the Liberals and the Mensheviks in the overthrow of the Tzarist rule, but once that was done Russia must be governed according to the gospel of Marxian Socialism. Even the dictatorship of the proletariat was only a political means to the economic end of the "socialization of all the means of production, distribution and exchange of wealth." According to the manifesto of the Russian Social Democratic Workmen's Party issued as long ago as 1898 the Russian proletariat was to get rid of the yoke of Tzarism in order to fight with still greater energy Capitalism

<sup>1</sup> Speech of Lenin, quoted in *Lenin*, by Trotsky.

and the bourgeoisie and to the complete victory of Socialism.<sup>1</sup> And the last of the Russian socialistic congresses before the Great War, declared in 1905, after resolving upon the overthrow of the *ancien régime* and the bourgeoisie and upon the dictatorship of the proletariat, that the object of the movement was the transformation of the capitalistic order by the suppression of private property, inheritance, indirect taxes, the imposition of taxes on revenue and so forth.<sup>2</sup>

INDUSTRY THE CAUSE AND ORIGIN OF THE RUSSIAN  
REVOLUTION

If the object of the Bolshevik revolution was industrial, so also were its immediate causes and its actual process. Soon after the completion of the Manchurian War in 1910, a large number of huge industrial enterprises had been set up in Russia, financed largely by foreign capital, French and German, attracted by large concessions granted by the Russian bureaucracy. The mining industry and the locomotive industry were the most important of such enterprises. But for these large-scale industries set up by the government of the Tzars, the Bolshevik revolution would not have happened. A purely peasant Russia would not have organized this particular kind of revolution. And it was the breakdown of this large-scale Russian industry that precipitated the change. M. Labry has described how the progressive decline and fall of Russian industry from the beginning of the Great War in July 1914 led to that anti-social relationship between the capitalist and the workman and the government and the people which together with the increasing poverty and misery of the people made them wish for revolution as a way out of the world of despair and defeat which had by 1916 come upon them. As Kerensky<sup>3</sup> told the Duma in January 1917, the disorganization of social and economic life was worse than in 1613, the darkest days till then of Russian history, and that chaos had the economic life of the country in its grip. It was in the factories

<sup>1</sup> Labry, *L'industrie russe et la révolution*, 1919.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

and purlieus of Russian Industry that the revolution broke out. A decree of the Russian government issued in February 1917 recognized that groups of workmen's delegates had become the centres of workmen's organizations and were aiming at the establishment of a social democratic republic. It was in the factories that the defeatist propaganda against the continuance of the War was most intense. The constitutional programme of the Cadets was addressed and appealed only to the middle and the intellectual classes. The centre of revolutionary agitation was the Pontiloff factory, where meeting after meeting was held to mobilize the attack on the government of the Tzar. Prohibited or prevented by the decrees of the government, the workers of these factories overflowed into the streets and gave rise to those collisions with the police on the eve of the revolution which set the match to the inflammable material of discontent.

#### RUSSIAN REVOLUTION AN INDUSTRIAL REVOLUTION

The Russian revolution, according to the accounts of observers, was essentially a revolution of the industrial working classes. The middle classes had no part nor lot in it. They simply looked on in the streets in their furs and coats as if it were a passing riot. The revolution began to take shape and direction when in March 1917 a Council of Workmen's Delegates was elected to organize it. This was the Soviet which addressed the significant proclamation to the population of Petrograd announcing to them that in the capital had been created a Council of Workmen's Delegates and Soldiers elected by the factories and shops, that this Council had appointed commissaries who would establish the power of the people in the different quarters of Petrograd, and inviting the people to range themselves around the Soviet. And in the wake of Petrograd councils of workmen and soldiers were formed all over Russia, which drove away from power the officers of the *ancien régime* and attached themselves to the Soviet of the capital. The fall of the Tzarist régime was followed by the remarkable rise of

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revolutionary associations of all kinds all over the country. Side by side with governmental organization, attacking it and attacking each other, they arose in swarms and legions. It was as if the spirit of association cribbed, cabined and confined by the suspicious policy of a centralized bureaucracy had been let loose. These new associations took the place of the old authorities. In towns, in industrial centres, in the *valosts*, arose executive committees, committees of the power of the people, committees of public safety, and so forth. They came into conflict with the municipal councils as well as with the central government. They requisitioned public offices and other property, sequestered merchandise and means of transport, collected duties and interfered with individual work. It was as if with the breakdown of the central government authority was reduced to its elements. But all these associations and movements were mainly industrial in character.

## A WORKING CLASS REVOLUTION

The leading part in the Russian revolution was played by the Soviets of workmen and soldiers. It was with these workmen's organizations that the industrial masses delivered battle to the representatives of Russian middle-class moderation, the Duma, which had refused to dissolve itself at the behest of the Tzar and had formed for itself an executive committee called the Provisional Government. The Soviet from the beginning acted as the tutor and often as the dictator of the Provisional Government. It acted as if the industrial proletariat was the master of the situation. Its leaders did their best to undermine the authority of the Provisional Government. They attacked its war policy and preached defeatism. They circulated pamphlets against Capitalism and fed the hatred of workmen towards their employers. The authority of the Provisional Government broke down and the Soviet took its place. The weakness of Kerensky towards Lenin signed the death warrant of the Girondins of the Russian revolution.

## THE STATE MADE BY INDUSTRY

### INDUSTRIAL METHODS OF THE RUSSIAN REVOLUTION

Not only the instruments, but the methods of Bolshevik revolution were industrial in character. The ground for the revolution had been prepared by the propaganda of indiscipline, insubordination and anarchy that had been preached and inculcated in the industrial factories and workshops all over Russia. The instruments of this revolution were a large army of industrial workmen who had been impregnated with the idea of war to the knife—against capitalist employers and the middle classes. The opinion of a competent French observer, M. Darcy, in charge of an important commercial concern in Russia, is applicable to the state of affairs all over the country in those fateful days of July to October 1917, when the destiny of Russia was trembling in the balance. Returning from a business tour in Southern Russia, he recorded<sup>1</sup> that the most complete anarchy reigned in the Donetz, that every factory, every workshop, was at the mercy of the needs, the threats, the fancies of the workmen, that the malleable masses were worked upon by a minority of demagogues passionately attached to their formulas of war against capital, and of “the factory to the workers” and “the mines to the miners.” It is out of this spirit of indiscipline and anarchy engendered in factories and workshops that the Bolshevik revolution was generated. The results of this indiscipline and anarchy the organizers of the revolution were in after years to deplore. The Bolshevik revolution which delivered its knock-out blow to the old order in November 1917 was an industrial revolution. And the Bolshevik government that was founded on its results has throughout maintained that industrial character.

### SOVIET RUSSIA, A STATE MADE BY INDUSTRY

From the beginning an industrial ply was given to the new government. The first business of the executive of the new government was to dissolve in January 1918 the Constitutional

<sup>1</sup> Quoted in Labry, *L'industrie russe et la révolution*.



Assembly, as it was an institution of the old defunct bourgeois parliamentarianism which had no right to exist in a Russia that was to be ruled by the industrial proletariat to whom, indeed, the citizenship of the future in Russia was to be confined. The government of Russia was to be in the hands of the industrial soviets and councils and commissaries that derived their power from them. And the government that immediately came into power set about realizing the principles of Marxian Socialism in the field of industrial enterprise. The first of its laws decreed the nationalization of all industrial works. Executive decrees of November and December 1917 ordered the application of workmen's control to all industrial concerns, not exempting foreign ones, and defined and described the organ by which Labour would control in large factories or workshops. Another decree passed in January 1918 commanded the confiscation of the capital of private banks. The loans of the Tzarist Government were cancelled as well as the obligations of the Treasury. There followed in rapid succession, the confiscation of the movables, the increase of taxes on the middle classes, the suppression of inheritance, the prohibition of exports and imports, the establishment of monopolies in the sale of cloth.

For the organization of the economic life of the people, a supreme Council of National Economy was set up, responsible to the Council of Commissaries of the people, and which was to take measures necessary for organizing in the interests of the country, which meant the proletariat, the production and distribution of goods, the financial resources of the State and for co-ordinating the activity of different institutions and corporations. It had the right of confiscating, requisitioning, sequestering anything required for its purposes. To facilitate the work of this council, it was divided into sections and services and there were subordinate regional councils all over the country. To this class of local councils belonged the colleges elected by professional services, committees of factories and workshops, agrarian committees, representatives of local

soviets. There were fourteen sections which divided the work of the economic administration of the country between them. Twelve of these sections had to do with industrial business and only one of them with agriculture.

The preoccupation of these economic sections has been industrial. It is significant that one of these economic sections should be charged with the duty of general government in addition to the administration of banks. Government evidently, according to the Bolshevik system, is only a part of the industrial organisation of the State. The Bolshevik government was, in fact, nothing more nor less than the industrial organization of the State. Industry has replaced government in the political life of the State. The source of all political power, according to Bolshevism, is the industrial proletariat. The only governmental institutions are the industrial soviets. The main object and preoccupation of the government is the production of wealth. Art, literature, religion and philosophy are to realize and embody the ideals of industrialism. Education, culture, civilization are accordingly secondary considerations and by-products of industry.

The only fly in the ointment of Bolshevik government has been the refusal of Russian agriculture to come within the embrace of the Bolshevik system. Private property is still allowed in that region. The peasantry has been more than once recognized by Lenin to be the despair of the Bolshevik social policy. But agriculture apart, the social philosophy of the Bolshevik State is frankly industrial. One who cannot work, especially with his hands, has no place in Bolshevik society. The priest, the mystic, the philosopher, the poet, have no place of honour in Russia, except to the extent to which they minister to Bolshevik ideals. Bolshevik democracy is a democracy of hand-workers. It is a purely industrial democracy. The peasants are at a discount in the Bolshevik polity, and the peasant returns the compliment by looking upon Bolshevism as the domination of the city over the village. Zinovieff, a Bolshevik leader, had to acknowledge that the Bolsheviks

## THE MAKING OF THE STATE

were only a city party.<sup>1</sup> According to Bolshevism, which is, after all, the gospel of Socialism translated into a practical creed, the whole life of the State is governed by Industry. Industry is made by the State and the State is made for Industry. Never before in the history of the world has such an attempt been made to build a State on the foundation of Industry alone and to govern it with the ideas and institutions of Industry.

## THE MEANING OF THE RUSSIAN REVOLUTION

What is the message of the Bolshevik revolution to the world? Is it one of hope and progress? Has the Bolshevik experiment in the organization of Industry and in the organization of the State proved itself to be superior to the systems that have gone before it? Has the Russian experiment been successful? Before we can answer these questions, we must further ask in what direction and to what extent has it been successful, if it has been successful at all. The Russian experiment is an experiment in industrial organization as well as an attempt at social and political reconstruction. Has the Bolshevik State been able to organize Russian Industry more efficiently and fruitfully than it was in the Tzarist régime? Has the wealth of Russia increased under the Bolshevik impetus? Have the relations between Labour and the industrial government become more social and fraternal than before? Have all the wastage, the cross-purposes, the disorder of the régime of competition been eliminated? In answer to these questions it must be acknowledged that the first years of the revolution have a sorry tale to tell of industrial disorder and incompetence. M. Labry, in his well-documented account of Russian industry in the early years of the Bolshevik régime, tells a depressing story of diminished production. The production of locomotive rolling-stock in 1918 was three to ten times lower than that required by the Supreme Council of National Economy. The Soviet itself had to recognize that the produce of labour had

<sup>1</sup> Lawton, *The Russian Revolution*.

gone down and that the want of locomotives constituted a national danger. The Supreme Council of National Economy had to decree, in the period January to April 1918, the dissolution of 114 enterprises out of 706 which had existed on 1st January of that year at Petrograd. During the same period the number of workmen at Petrograd had diminished by about 157,491, i.e. by about 56 per cent, the better class of workmen finding it impossible to work in the conditions of Soviet industry and returning to their villages. Another large proportion of workmen was swallowed up by election to the numerous committees of Soviet organization. The transport industry of Russia, once highly developed, became dull and anaemic. The great river Volga, the mother of Russia, was, according to an official publication, deserted. The cost of river transport grew by leaps and bounds. The railway transport, already breaking down on the eve of the War, went deeper down into the mire of depression. Almost every industry in Russia had been obliged to reduce its production. There was only one industry that flourished, the printing of paper money.

The chief cause of this breakdown and progressive decline of Russian industry was the indiscipline, the insubordination, which often amounted to anarchy, of the workers in the various factories and industrial enterprises. The dictatorship of the proletariat had been preached successfully and the demand for high wages and less work was the order of the day in each industry. The government of industry was in the hands of the workers. Their will and not the needs of industry, determined the production of that industry. Neither industrial peace nor industrial progress was achieved by the Bolshevik organization in the early years of the new system. Strikes and conflicts between government and industry have been as frequent as before. Judged merely as an attempt at industrial organization the Bolshevik experiment in its early years cannot be judged a success.

This depressing account of Russian industry will be strictly applicable only to the early years of the revolution. More order

seems to have been introduced in factories in recent years. The rôle of experts in Industry has been accepted. Labour is so organized by the Supreme Council and professional alliances (Trade Unions) that strikes have almost been eliminated. "The workers in a factory," says Goode,<sup>1</sup> "are personally conscious of the part they play in the efficiency of the factory. Through a system of election and selection, competent and excellent foremen and managers have been placed in the Supreme Council of Industry." The system, says Mr. Goode, even allows co-operation in Industry between different mills, prevents friction between the professional alliances and the managements and stimulates the workers. But all this has been done at the expense of the complete Marxist gospel. To judge of the present position of Industry from the admission of the leaders of the Bolshevik revolution and government, the results of the socialistic organization of industry are not very satisfactory. The production of Industry has been fruitful only so far as the principles of Socialism and Communism have been modified. The retreat from Communism was sounded soon after the Kronstadt revolution in 1922, and the New Economic Policy was inaugurated. The peasants were granted liberty to dispose of the surplus corn in a free market. The workers were allowed to appropriate part of their production. The factories were secured the right to dispose of their output and to go to the open market for raw materials, the State distribution of which came to an end. The card system was given up and wages in money or kind took its place. Concession was granted to foreign capital and enterprise. Lenin had to acknowledge defeat when he said, "as long as we are living in a country of smallholders, Capitalism has a solider basis than Socialism. We are weaker in the world and in Russia than Capitalism,"<sup>2</sup> and even Trotsky had to confess, "We have failed in our plan." It is not yet time to judge whether the Five-Year Plan will succeed where its predecessors have failed.<sup>3</sup>

<sup>1</sup> *Bolshevism at Work.*

<sup>2</sup> Quoted in Lawton, *The Russian Revolution.*

<sup>3</sup> For an up-to-date confirmation of the conclusions in the text see an article in *Schmollers Jahrbuch*, 1932, by Dr. Paul Berkenkopf.

## THE RESULTS OF THE RUSSIAN REVOLUTION

The leaders of the Russian revolution, confronted by the setback to the realization of the Marxian programme, have asked for allowances to be made. Their reason for the failure of the Bolshevik experiment so far is that it has been conducted in unfavourable circumstances and that the socialistic organization of Russian society has not been allowed to be completed. The Bolshevik government has had to contend with attacks from without and the forces of conservatism from within. This is a curious excuse for a body of revolutionaries to advance. What would we think of the French revolutionaries if they had tried to excuse themselves for the incompleteness of the French Revolution by the power of the allied armies from outside and the presence of the royalists within? And it is an excuse which the Bolshevik government cannot advance except in regard to the first three or four years of the revolution. But since then they have had a free field. They have been allowed to use all the resources of revolution and of a power as great as that of any Committee of Public Safety to achieve their objects. If they have failed it is not because of the weakness of the power they wielded but on account of the opposition to their policy embedded in the nature of things, especially in the nature of Russian things.

The leaders of the Soviet also account for the incompleteness of their programme by the fact that they have not been able to perfect the socialization of Russian Industry. Agriculture is still standing outside it and refuses to come, in spite of threats and blandishments, within the socialistic programme. But whose fault is it? Power the Bolshevik government has had, and it has had freedom to exercise it. If they have been unable with all that power and with all the methods of despotism, unmodified by pity or prudence, to complete and perfect the socialization of Industry, is not this failure the last of the arguments that may be applied to Socialism as a means of organizing society?

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Letting the facts of Russian industry go by and admitting for argument's sake that the Bolshevik organization of industry has been for the benefit of Russian industry, that it has increased Russian wealth and distributed it more evenly than before, that industrial peace exists to a much larger extent than previously and that the freedom of the proletariat has been ensured, we may yet ask whether the Bolshevik experiment was on the whole worth while. For industry is not the whole of life. What has the Bolshevik experiment done for government, for liberty, for civilization and for culture?

### THE DICTATORSHIP OF THE PROLETARIAT

The social and political organization of Russia under the Tzars was woefully defective. It was too centralized, too bureaucratic, too intolerant of individual activity and freedom, too suspicious of free social activity to have been a pleasant or useful thing to the people of Russia. No one regrets the passing away of the Tzarist régime. But has the government that has been substituted in its place proved to be superior? De Tocqueville, in his study<sup>1</sup> of the French Revolution, proved the thesis that the principle of French government, the spirit of centralization and of governmental interference has not been changed in France by the substitution of republic for monarchy. Revolutions rarely change the spirit, however much they may change the form of government. This thesis is supported by the history of the Russian government after the Revolution. The autocracy is still there, but it is called the dictatorship of the proletariat. The proletariat is the source of political power in modern Russia as was the pious peasantry the source of power of the Tzar, the little father of his people. But it is only very indirectly and very faintly that the proletariat can be said to govern Soviet Russia. By a series of stages of indirect election, the supreme government of Russia is formed by means of election to the All-Russian Congress of Soviets, then to the Central Executive Committee, and then to the

<sup>1</sup> De Tocqueville, *L'ancien régime et la révolution*.



Committee of the People's Commissars which forms the apex of the governmental pyramid in Russia. But it is only a proportion of the population that elect even so indirectly. It is only the people that believe in Socialism, that is, in the Bolshevik brand of Socialism, that are allowed to elect in Russia. No political party is legal except the Communists.<sup>1</sup> Elections in Russia are personally conducted by the government, and Mr. H. G. Wells,<sup>2</sup> no unfriendly critic, admits that the fabric of the Bolshevik state is not built on liberty. Representative government as it has operated in history is anathema to Bolshevism. "The breaking up of the Constituent Assembly by the Soviet power," said Lenin, at the time when an effort was made to get the mind of Russia to decide upon the future form of government for the country, "is the complete and public liquidation of formal democracy in the name of revolutionary dictatorship."

#### THE EFFICIENCY OF THE RUSSIAN STATE

If the Russian State is not built on liberty as it has been understood in history, is it at least built on efficiency? Are individual and communal life in Russia richer and more prosperous than before? Has Russia got a better army, a more humane bureaucracy, more and better roads, more and better schools, colleges and universities than before? Are the relations between the State and Religion based on freedom and respect for each other? If these questions can be answered in the affirmative, then we will be justified in accepting the Bolshevik State as a decidedly better thing than what it has displaced. Moreover, what has Bolshevism done for Russian civilization and culture? Are Art, Letters and Philosophy the better for the coming of the Bolshevik system? Perhaps it may be contended that the period of the Bolshevik Government has been too short for a fair test. But it is not by achievement alone that we can test the worth of an institution. What did Bolshevism promise? Have the foundations of achievement

<sup>1</sup> Lawton, *The Russian Revolution*.

<sup>2</sup> Wells, *Russia in the Shadows*.

been laid? Have the Bolshevik leaders and followers begun the journey on the road of progress and liberty?

From all the accounts that we have received of Bolshevik Russia we can say that the Bolsheviks have laid the foundations of neither progress nor liberty in their country. The government is strong and powerful, more terrible in its power than the tyranny of the Tzars. But the Bolshevik government is not a government of liberty. The life that it creates is not the life of freedom. The only life it will create and provide for is the life lived according to the gospel of Bolshevism. The only citizens it will recognize and protect are those who believe in the full gospel of Socialism or who are necessary for its work. The progress that Bolshevism aims at is progress in the grooves of Socialism. The education of children must be according to the Bolshevik ideals. Not Truth, but Marxism, is to be taught in Russian schools and colleges. Religion has been banished from education and is being banished from Russian life itself. Art, literature, civilization, and culture must all carry out the proletariat idea. There is no room in the Bolshevik State for other classes than the proletariat and its rulers, for other ideas and institutions than the Bolshevik.

#### THE INDUSTRIAL END OF THE BOLSHEVIK STATE

The main business of the Bolshevik State is the production of wealth. Its whole outlook is industrial and every department of life is influenced by the industrial ideal. Nationality, love of country, the appeal of the soil, the genius of the people are nothing to the rulers of Soviet Russia. To save the principle of Bolshevism, its leaders were prepared to see the most historical parts of Russia cut off. When Trotsky spoke of the German invasion of Russia and of the supreme need of defending the country against it in 1917, Lenin replied<sup>1</sup> that to save the principles of the revolution he was ready to abandon Moscow and Petrograd and move even as far as Kamchatka. "The Kurnetsky basin is rich in coal," he said, "we will form

<sup>1</sup> See *Lenin*, by Trotsky.

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an Ural-Kurnetsky republic based on the industry of the Ural and the coal of the Kurnetsky basin and the proletariat of the Ural; the Moscow and Petersburg workers we can take with us." Industry as the basis of the State would seem to drive the world back to nomadism. The Bolshevik State is therefore nothing but a factory of national wealth and the Bolshevik government is the managing director of the Great Russian Combine. The State in Russia has become an industrial factory and its government the board of directors of a Big Business.

### LESSONS OF THE BOLSHEVIK EXPERIMENT

The lesson of the Bolshevik experiment in State building would seem to be that one builds a State on incomplete foundations when one tries to build it upon Industry. It is a lesson that has been taught but it is a lesson which has to be learnt even by States that fall short of the complete industrial idea of Bolshevism but are under the grip of the ideals of industrialism. Socialistic Bolshevism is only the climax of the industrial movement, and every State in which industry plays a predominant part in its economic life will suffer in some measure and to a certain extent from the evils from which Bolshevik Russia is now suffering in full measure and to the completest extent. Falling short of the Bolshevik climax, many modern States suffer from the evils of a State which is industrial in its ideals and is becoming industrial in its organization and methods. The concentration of capital in the hands of a few and of large masses of labour in large factories, the accumulation of wealth in one part of society, the proletarianization of labour in the other, the utter dependence of the wage-earners on the capitalists, have, as we have seen, produced conditions which led to the inauguration of the Bolshevik experiment in Russia.

### INDUSTRY IN OTHER STATES

The division of modern western society into a plutocracy on the one side and a proletariat on the other is the outstanding

sign of an industrial society. The proletariat and the plutocracy facing each other are the direct consequences of industrialism. The middle class tends to disappear as industrialism gathers strength. Marxian Socialism, born out of modern industrialism, has declared war to the knife against the bourgeoisie. The free and unchecked development of Industry leads to plutocracy on the one side and the proletariat on the other. In countries where the Bolshevik ideal has not been completely realized, the modern State built on the foundation of industry is the State of a proletariat citizenship managed by a plutocratic government. No real organic unity or community is possible in such a State. "The modern industrial development," says Förster,<sup>1</sup> "takes men out of all organic relationships, gather them in a monstrous mass, brings them outwardly together but inwardly separates them as never before."

#### PLUTOCRACY AND PROLETARIAT

By keeping Bolshevism outside one's State, one cannot hug the delusion that the effects of industry upon politics will be kept out of one's country. The evils of a plutocratic and proletarian society are just as serious as the evils of Bolshevism. A sceptic world that refuses to learn from Bolshevism and the Russian experiment may take a lesson from the fate of those States which in other ages have had their society divided into a governing plutocracy and a servile proletariat. The rise of the plutocratic-proletariat State always happens when society is divided into two classes, one consisting of a few rich people dominating over a multitude of landless and capital-bereft mass of men. Modern plutocracy and modern proletariats are due to the development of Industry. But Industry need not be the only cause of the accumulation of wealth. In other times it was trade and commerce that have acted as the cause and source of the concentration of wealth. In republican Rome the plutocracy and the proletariat arose out of the development of commerce and the lessons taught by the fate of the Roman

<sup>1</sup> *Christentum und Classenkampf*.

plutocracy and proletariat may well be learned by modern industrial States, who think they are remote from the developments of Bolshevism. The political development of ancient States whose society was divided into a plutocracy and a proletariat may well carry fruitful lessons to modern peoples.

#### PLUTOCRACY IN HISTORY

The form of government suited to such a society, as Roscher<sup>1</sup> points out, is partly aristocratic and partly democratic—aristocracy at the top and democracy at the bottom. But the aristocracy and the democracy of this form of government have special and peculiar features.

Plutocratic government has the exclusiveness, the monopoly of power, the domination over the rest of the people common to all aristocratic forms of government. But it has none of the culture, the generosity, the charity, which are the mellowing characteristics of an aristocracy based upon birth. Plutocracy loves centralization and bureaucracy, whereas a landed aristocracy abhors them. The whole political life of the people is concentrated at the capital, whereas active life in the parts, municipal self-government and the autonomy of corporations are the marks of life in a State where a landed and natural aristocracy governs. Money is the bond that keeps a plutocratic State together and not the ties of relationship, of neighbourhood or occupation. Access to the ranks of the governing plutocracy is always open to the proletariat provided it comes with the requisite money in its hands. In the plutocratic State, "every door is barred with gold and opens but to golden keys." Of one of the greatest plutocracies, the greatest known to history, according to Roscher, its inveterate enemy could exclaim: *O urbem venalem si emptorem inveniet!*

#### PROLETARIATS

At the other end of the scale in a plutocratic State lies the proletariat, which is apparently democratic in its composition.

<sup>1</sup> Roscher, *Politik.* ^

It possesses some of the qualities of a democracy. It has the equality and the sovereignty of a democracy. But it has the equality of a property-less wage-earning population, depending for its existence on the will and whim of the plutocratic capitalists. It is a sovereign, but in the sense in which gods of stone and mud which savages set up to adore are sovereign. The plutocratic governors pay court to their rulers, but like the Roman augurs, they smile when they think of what they worship. The proletariats are sovereign only to the extent that they are allowed to set up particular members of the plutocracy in power. But they have little or no might to influence the conduct of their rulers. The proletariat sovereign is paid the homage of incense and fair words and is seduced by the fruits of office or concessions of doles.

#### ROMAN PLUTOCRACY

Ancient plutocracy, we said just now, was made by commerce. Industry could not be the cause of ancient plutocracy as Industry could not advance in a society dominated by slavery which, as Roscher points out, neither generates skilled producers nor that large body of consumers which are necessary for the development of Industry. Not only in Rome, but in Carthage, did ancient commerce build a plutocracy. It was probably the contact of Rome with Carthage in the Punic Wars that generated the impulse to commerce which soon caught hold of the Romans and kept them in its grip ever afterwards till it worked their doom. The Roman instinct against political evils, warning them of the dangers of commerce, probably induced them to pass that early law of Flaminius against Senators partaking in speculative commerce.<sup>1</sup> But the chances of speculation in trade and commerce were too strong to resist and great statesmen like Cicero, Pompey and Caesar loved a flutter in the financial gambles of their time. Inordinate luxury and extravagance led to indebtedness among the leading citizens in the last days of the Roman republic. Caesar's

<sup>1</sup> These facts are taken from Roscher's *Politik*.

appointment to Spain as *propraetor* was brought about by his indebtedness, which he was expected to reduce by his operations in that province. According to Mommsen, Caesar's debt in his thirty-eighth year amounted to 38 million sesterces, while the *Curios*, the *Milos*, the *Antonys* of his time went even beyond him. The cancellation of debts, *tabulae novae*, was a frequent cause of the revolutions in which the Roman republic foundered and was wrecked. The perpetual wars and foreign conquests of Rome tended to extinguish the middle classes, who at the beginning had furnished the soldiery, and left Roman society divided between a few very rich persons and a numerous and property-less mob. The provinces won by Roman armies were so many camps of exercise for Roman greed, to which even the democratic *Marius* fell a victim.

An enormous increase in the number of slaves and the cultivation of huge *latifundia* by gangs of them strengthened the process of the proletarianization of the Roman people. The inordinate luxury of a few and the grinding pauperism of the many led to the corruption of Roman public life. The property-less proletariat became a fit object for the seduction and corruption of successful claimants for its favour. The Roman proletariat was successfully tamed and held in check by varying doses of *panem et circenses*. The senatorial and the equestrian classes divided between them the spoils of war, and the wealth and taxable capacity of the conquered provinces. The men who conquered these provinces were allowed to drag out their miserable existence in the ranks of the proletariat or in slavery. The sad saying of *Tiberius Gracchus* that the wild animals of Italy had their shelter and stalls, but its masters, who had shed their blood in the conquest of an empire, had not a roof above their heads for themselves, their wives and their children was the unadorned statement of only a bare truth. According to contemporary authorities not more than 2,000 citizens of the Roman republic in its last days had property of any kind. *Cicero* could say that the whole wealth of nations had come



into the hands of a few men. The close connection between property and family life is illustrated in the lawlessness which it created in the last days of the Republic. While Roman family life was notable at one time for its integrity and discipline, the loosest sexual relations obtained among the luxurious upper classes of Rome of the later republic and the empire. Even that stern moralist Cato lent his wife to his friend Hortensius and re-married her after his friend's death. Other marks of the proletarianization of Rome were the slave wars of the last but one century B.C., the menace of piracy which was encouraged by the collusion of highly placed Romans and by the phenomenon of the position and power of men like Crassus.

CRASSUS AND VERRES THE ANCESTORS OF MODERN  
PLUTOCRATS

The career<sup>1</sup> of this Roman financier and statesman was typical of the last days of the Roman republic, and anticipated that of the financial magnates of to-day. He made his colossal fortunes through public affairs and the offices that he held. He made his money on the modern principle that business is business, which means that business does not reckon of morality or humanity. Falsifying bills, speculative insurance, financing litigation, free and open lending of money to young bloods and old Senators, the greater number of whom were said to be his debtors, were the methods by which Crassus made his money, and, through his money, wielded the power of the State. As consul, he entertained a populace to the number of 10,000 and found them in corn for three months. The Senate, the judiciary, and the people were in his power through his wealth. Another typical man of light and leading in those times was Verres who held whole provinces of Rome in piratical fee. A State which had rulers like Crassus and Verres and subjects that could be bemused by free gifts of corn and wine could be saved only by the surgery of the sword, and the plutocratic Roman republic went down in a pool of blood shed by some

<sup>1</sup> See Roscher's *Politik*.

of its most illustrious sons, among whom Marius, Sulla, Pompey and Caesar were in the front line. Rome was saved from the dissolution which clogs the footsteps of such ill-organized States as those founded on a plutocracy of the few and on the proletariat of the many only by the sharp knife of Caesarism.

#### OTHER PLUTOCRACIES

Other plutocracies<sup>1</sup> there have been in the world, like Athens and Greek cities on the eve of the Roman conquest, where gold and silver were worshipped as all-powerful gods. So also was the State of the Jews in the time of the Prophets Isaiah, Amos and Nehemiah, who deplored the gulf that yawned between the rich and the poor and denounced the rich for their treatment of the poor and the corruption of the judges. So also were the city-States of the later Middle Ages in Italy, like Florence where, according to Machiavelli, the rich and the poor were divided into two opposite and warring camps and where the accents of modern Socialism could be heard. But it is Rome in the last days of the Republic that furnishes us the supreme example of a plutocratic State and a warning of the fate that awaits the States built of a proletariat governed by a plutocracy. And it is the fate of Rome that has shown that the evils of plutocracy can be cured by the desperate remedy of Caesarism.

#### A WAY OUT OF THE PLUTOCRATIC-PROLETARIAT STATE

Is Caesarism, however, the only way out of a plutocratic and proletarian State? It would seem so if we are to be impressed by the lessons of Leninism, Fascism and other dictatorships which have become familiar phenomena in modern times. But politics would be a bankrupt science if it did not suggest remedies of peaceful reformation. The sword of Caesarism is no doubt the only cure for rotting societies. But there is a point in disease when cure is possible through medicine without recourse being had to surgery. Peaceful remedies there are for the evils of a plutocratic-proletariat state and the following

<sup>1</sup> Roscher's *Politik*.

have been suggested by a great economist and publicist, F. W. Roscher. First among them must stand the education of personal character. The greed for wealth must be eliminated. Men must be taught to believe that money is not everything, that money is good, but personal morality and religion and culture are better. Both the classes in a plutocratic society have need to be taught this salutary lesson. As Roscher<sup>1</sup> puts it, the rich slaves of Mammon are as bad in their lust for wealth as the poor Communists, and they have less excuse than the latter. The ideal of a plutocratic society is sheer materialism and unless its members are weaned from it no cure is possible. A society given over to the worship of money and the mere production of wealth will meet the fate of King Midas. All that it touches will be gold and it will starve and die in the midst of plenty.

#### WEALTH OR LIFE?

Not the production of wealth but the production of more and better life must be the aim of any healthy society. The function of industry must be determined as Mr. Tawney<sup>2</sup> forcibly argues, by the purposes of society, not by the will to gain of the individual. Consequently the proletariat must be guarded against exploitation at the hands of the plutocracy, by the spirit of association being encouraged among them, not so much with the purpose of waging war against the plutocracy but for their own economic and social progress. Thrift societies, insurance societies, credit associations, are means of improving the economic independence of the wage-earner. The colossal industries of modern times are the direct cause of the plutocracy and the proletariat of these days and they must be replaced as far as possible by small industries. The concentration of vast numbers of property-less persons in large cities is a menace to society. The housing problem must be solved to the comfort and content of the working classes. The workers in factories and shops must be made to feel that their industry is their own and they must be associated within the limits of

<sup>1</sup> Roscher, *Politik*.

<sup>2</sup> *The Acquisitive Society*.

discipline and efficiency in the management of that industry. The preponderance of industry which is one of the causes of plutocratic society must be broken by the restoration of agriculture to its proper place in the political economy of the State. Agriculture is the sustainer of life and the source of health. "It is in the declining age of a State," says Bacon,<sup>1</sup> "that merchants and merchandise flourish." Nothing, not even the most advanced industry can replace agriculture. Countries which preserve the proper balance between agriculture and industry, like France, are not liable to those financial stresses and strains to which over-industrialized countries, like England and Germany, are prone.

#### LAND RATHER THAN INDUSTRY THE FOUNDATION OF THE STATE

Land must be recognized as the real foundation of the State. The equalization of land to other forms of property has much to account for the view that industry is as important for the making of the State as was land. That industry and trade and commerce have contributed much to the development of the State no one may doubt. But to reduce land to a footing of equality to industry is a perilous step. Land cannot be subjected to the processes of industry. Land is too rigid, too fixed, too individual, to be treated as if it were a bale of cotton or of silk. For one thing land cannot be moved about and transported. It is too individual to be treated in the mass, the soil and subsoil varying from country to country and from district to district in each country and even from field to field. The matter of land is as individual as that of the human being and therefore it requires individual treatment.

Individual proprietorship of land is called for by the very nature and character of land. Property in land has therefore to be individual. It is possible to apply the industrial methods of large-scale production to such preliminary processes as the clearing of forests or the irrigation of drainable land. Real intensive cultivation of land is possible only with individual

<sup>1</sup> *Essay on the Vicissitudes of Things.*

proprietorship. The most productive methods of cultivating land are the secret of the small individual proprietors of France, Belgium and China. The *latifundia* of the last days of the Roman republic are an example of the futile methods of industrial production applied to land.

Very often the land tenure of a country accounts for its undue industrial development. It was the concentration of land in the hands of a few that was one of the causes of the great industrial development that took place in England. The large agricultural possessions of English landlords provoked the founding of the large factories of landless capitalists. A proper combination of large, middle and small landholders secures, as Roscher teaches, the ideal distribution of land. Anyway, land must be more evenly distributed than it is at present if the evils of industrialism are to be avoided. A State brought to the verge of ruin by industrialism can be made whole again if it recovers once more its old foundation, which is land. The folly of building a State on industry is illustrated by the fact that when nomadic peoples are introduced to civilization without being passed through the experience of agriculture, the industries they take to are destructive. The most frequent industries found among the tribes on the Afghan frontiers are those of gun and ammunition making. The most modern kind of rifles can be made in Afghanistan near the frontier.

#### THE PROPER PLACE OF INDUSTRY IN THE STATE

To say that industry cannot be the foundation of the State is not to deny its usefulness as an aid to the State. Industry has in ancient, mediaeval and modern times been an aid to liberty and progress. Industry in the Middle Ages dissolved feudalism. Industry has led to the political emancipation of the masses of the modern State. Industry has done much for expanding the State. Industry increases enormously the wealth of a State. Industry makes a State progressive. For agricultural States would be stationary and anaemic if they were not stimulated by the activity of industry. Merchants, according to

Bacon,<sup>1</sup> are the *vena porta* and if they flourish not a kingdom may have good limbs but will have empty veins and nourish little. Industry may help even the making of a State. The unity of a large State is kept intact by the resources and organization and inventions of modern industry. Russia has shown how industry can keep a large State together. And the political future of India is largely bound up with the progress of industry. Many of the ancient evils from which Indian society has suffered may dissolve with the advance of industry in Indian economic life. The industrial factory has no room and no scope for Caste. It is a good sign that the submerged classes of Hindu society are being brought within the influence of a life of discipline and organization, of liberty and of progress through and by means of the industrial factory. It is the business of wise statesmanship to devise means for the industrialization of India in the ways of peace and liberty and organic life.

Like Industry, Socialism, its creed, has done memorable service to the world. It has called the attention of mankind in a striking and arresting manner to the misery and pauperism of the working classes. Its error is that it thinks that the classes that work with their hands are the only classes that count. But the extremism of Socialism is to be accounted for by the acuteness of the disease it diagnoses. It has left a lasting legacy to political thought in the view that the social worth of all men must be measured by the work and service they do for their society and their State. Work, Socialism teaches, is the justification of life. But this work is not merely manual work. Nor does this philosophy of work mean that each man must earn himself the property he possesses, but rather that he must work in order to justify his place in society. The fundamental fallacy of Socialism is that it looks at only one side of life and deals with only one of the problems of life. It promises more wealth and not more and better life. It is the false dawn which, with its shot colours of red and violet and orange and blue, seduces man into hoping that the night of suffering is

<sup>1</sup> *Essay on Empire.*

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over and that the day of happiness and prosperity is immediately near at hand.

Neither Socialism nor Industry can be the only begetters or maintainers of the State. Socialism is as incomplete a philosophy of the State as Industry is an insecure foundation of the State. A State whose philosophy is Socialism will be as lopsided, as inorganic, as weak as a State that is built only on Industry. Socialism is useful as a corrective, as an irritant, as a challenge to social thought. Industry is a good pillar of the State, it can never form its foundation.



## X

### MAN AS MAKER OF THE STATE

"It is men, and not walls or ships in which there are no men, that constitute a State."—THUCYDIDES, *History*, VII. 77.

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So far in our study of the State we have been dealing with facts and ideas and institutions and the way in which they have moulded the size and shape and organization of the State. If we concluded our study of the State at this stage, we would, perhaps, go away with the impression that the State is a mechanical organization, set going by an original push and performing its functions with routine and regularity, obedient to certain laws of social motion, friction and energy, or at the best that it was an organism composed of numerous minor living organisms and going through certain biological processes, also with the regularity and immutability of a law of nature. The idea that the State is composed of men, who, although endowed with a life and will of their own, may not always live according to the life and will of the State, seems to have been lost sight of while we were concerned with the mechanical and biological aspects and processes of the State. Even the ideas that moved and excited States have been treated as impersonal forces, having nothing to do with the men that generated them or the men that had to execute them. And although we have spoken of man as an element in the making of the State, and one of the most important elements, we have treated him in the lump as a member of a group or a community or a nation. In fact, we have so far not looked upon man, the individual, as an element in the making of the State.

#### MAN AND GROUPS

It would seem, therefore, that in a treatment of the State that pretends to be scientific, man as an individual has little to do with the making of the State, that man as man would not be

able to make or unmake a State. In fact, we have seen that the size or shape or internal organization of a State does not depend to any large extent on the will of man. It is largely a consequence of the natural features, the geographical situation and the climate of the land. The State is governed by custom, laws and institutions, ideas and forces, which, if made by man, are not made by him as an individual, but as a member of a group or country or nation. The scientific treatment requires such an impersonal treatment of the State, for science deals only with the activities of things and beings as wholes. Individual activity would be a distraction and a vagary and the individual things that science has to deal with, atoms or cells for instance, are completely like one another.

#### MAN AS AN INDIVIDUAL

This treatment of the State seems, however, to lose sight of the fact that man as man, that is to say, as an individual, is the active principle in the State. He is not only the subject and the object of the activity, but the actor in the life of the State. The State is no doubt in large parts of it a machine, but behind the machine stands the man. The State is no doubt an organism, but the individual cell in this organism, which is man, has the right to say how he shall act. The life of the State depends on the life of the individual. The personality of man dominates the personality of the State. The best laid States gang oft a-gley because of the whims and fancies of the men managing them. The best organized, the most cunningly devised of governments are brought to the ground by the folly or the false steps of one man. Political history has proved, with damnable iteration, that it is impossible to make States or governments fool-proof. The genius of a single individual has saved one State from crumbling to pieces or has raised another State from ruins. The private lives of kings have strengthened the foundations of an infant State and the vices of ministers have brought ancient governments crumbling about their ears. It is the personality of the rulers of a State that guides and

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governs it. It is with man that the best organized, the most institutional, the most routine-ruled of governments have to work. And the best of machines break down when the man behind it breaks down. In the case of the State the breakdown is the greater. For, while in the case of the machine the man stands outside and has only a little to do with the functioning of the machine, the machine of State is actually made up of men, its nails and bolts and screws, its wheels and shafts, its motive power and its brakes are men. The life of the State, from its original motive power down to the stoppage of its activity, depends on the activity of man. It is man that gives life to the State. Man is the maker of the State.

## INSTITUTIONS USELESS WITHOUT INDIVIDUALS

Institutions, no doubt as we have seen, are necessary for the making of the State. But institutions without the active wills and impulses of men to work them are the graves of social life. And institutions, as a matter of fact, have been made by men. All attempts, says Sir James Frazer, to trace the origin and growth of human institutions without the intervention of human intelligence and will are radically vicious and doomed to failure,<sup>1</sup> "for it requires the prime factor of the movement, the main-spring of the whole machine, and that is man's conscious life, his thoughts, his aspirations, his endeavours," and the kings and presidents, the senates and parliaments of civilization, have their parallels in the chiefs and headmen, the councils of elders and the tribal assemblies of savagery.

## HISTORY MADE BY MEN

The truth that men make the State is proved by the historical and orthodox method of writing history which devotes more pages to the doings of sovereigns and heroes than to the common people. It is not a historian of the drum and trumpet school of Carlyle, but a severely scientific historian of recent times,

<sup>1</sup> *Totemism and Exogamy*, Vol. I, p. 285.

the Frenchman, M. de Morgan,<sup>1</sup> that says: "Without sharing the views of the modern writers who see in history only heroes, we ought, however, to recognize that it is of sovereigns that the annals make mention; the great men personify by often exaggerating the qualities and defects of their subjects, and therefore they furnish the best illustrations of the character of their peoples and factors of appreciation which would be wanting but for them. What description, in fact, can better characterize the Assyrian than a page of the fasti of a Sennacherib or an Assurbanipal, or better make us understand the Persians than Herodotus' narrative of the reigns of Darius and Artaxerxes, conquering Rome than the reigns of Augustus or Trajan."

Tradition always pictures a man as the maker of the State—Menes of Egypt, Sargon of Chaldea, Quetzalcoatl of Mexico, Theseus of Athens, Lycurgus of Sparta, Manu of Aryan India were makers of their States.

#### SCIENTIFIC SCORN OF THE INDIVIDUAL

A recent illustration of the indifference amounting to contempt shown by the scientific treatment of politics towards the influence of man in the making of the State is revealed in Mr. H. G. Wells's popular *Outline of History*. Mr. Wells is a man with a scientific training, long used to applying scientific methods to the solution of social and political problems. In the *Outline of History*, he has applied the scientific treatment to historical narrative. He looks upon the whole procession of historical events as a movement in which men are carried along largely in spite of themselves. He loves to deal with tendencies and drifts. According to him, customs, superstitions, religion, philosophy, ideas and institutions are the real motive forces of history. Man is a puny individual struggling in the embrace of forces and movements from which he cannot escape. Personality is of little account to Mr. Wells—especially the personality that masters circumstance, that deflects the stream of tendency, that creates institutions and rearranges the conditions

<sup>1</sup> *Les premières civilisations*, p. 42.

of social life. Mr. Wells has an unconcealed contempt for the great personalities of history. It is true he admires the great men of philosophy, of science and of theory. The hero of thought or of ideas extracts his meed of praise from him. But the hero of action who influences the course of history he deplores and castigates. While Carlyle exaggerates the importance of heroes in the making of history, Mr. Wells makes little of them. For him the hero of history does not exist. The great men of all time, Alexander, Napoleon, Caesar, are useless and meaningless ripples upon the placid surface of the historical movement. Mr. Wells has the scientific horror of the abnormal, the extraordinary and the exceptional, and some of the best remembered pages of his work contain devastating indictments of the influence of the great men of history upon their countries and the world at large.

#### H. G. WELLS'S INDICTMENT OF ALEXANDER

Is this indictment of Mr. Wells a true bill? Let us examine his case against a few of the great men that he has condemned out of hand as they appear before him. "Was Alexander the Great a statesman?" he asks, and answers his question by ascribing personal vanity as the motive for his policy of bringing about a reconciliation between the civilization of Greece and of Asia. He does not realize that this policy of blending the civilizations of Europe and Asia was a revolution in the minds of thinking and acting men in Alexander's time.<sup>1</sup> For were not the Greeks asked to renounce the ideas of centuries, when they were persuaded to mix not only their blood, but their lives and habits and customs with those of a people whom they had been taught to look upon and despise as barbarians? Were not the Persians called upon to live with those superior persons, the Greeks, who were their lifelong enemies? Was that a mean achievement? The persuading of these two peoples divided by their civilization, their culture, their forms of government, their modes of

<sup>1</sup> For a more historical view than Wells's of Alexander's statesmanship see Montesquieu, *Spirit of Laws*, Bk. X, ch. 14.

thought, to mix and blend their lives for the making of another world than they knew, could a merely vain boy, as Mr. Wells depicts Alexander, have accomplished?

Alexander's conquest of the world Mr. Wells dismisses as a mere wild-goose chase. But Mr. Wells himself recognizes that Alexander's conquests brought new countries and peoples to the knowledge of the educated men of those times and thus were of great geographical and scientific value. Was that, however, all? Were not Alexander's conquests an attempt to get the State out of the narrow shell in which it had been encased for centuries by the Greeks? To build a State larger than the Greeks had known and better organized than the Persian Empire, to widen the bounds of the State and strengthen its foundation, was the purpose of Alexander's conquests. The battle of Gaugamela, which to Wells is only a battle fit for brilliant description, is, in the eyes of M. de Morgan, the historian of ancient civilization, one of the most important battles of world history. "It signifies," the French archaeologist and historian says, "the entry on the scene of history of new political conceptions, of humane sentiments, of notions hitherto unknown on the duties and rights of citizens towards king and country and of sovereigns towards their peoples." The prosperity of Egypt under the Lagidae, the endurance of Syria and Persia under the Seleucids, the brilliant civilization of Bactria and Parthia, all of which lasted till the Roman conquest, would not have been, if Alexander had not gone on conquering and to conquer in the East.

That Alexander failed was due to his moral weaknesses, to his vanity of will, but what political leader has been morally perfect, and is man to be judged only by his achievements? Has not Alexander to be praised for the idea which animated his eastern expeditions and which marks him superior to the Greeks of his time and to his own father, Philip, and to his own tutor, Aristotle? It is curious that Mr. Wells makes much of the work of Alexander's father, Philip, who was satisfied only with the unification of Greece, while Alexander, who

anticipated the work of the Roman empire, is dismissed as a scatterbrained boy.

### JULIUS CAESAR

Another great man of history whom Mr. Wells cannot bear is Julius Caesar. Not even that "precipitate wrecker of splendid possibilities," as he calls Alexander, excites his ire so much as the Roman Caesar. Mr. Wells cannot put up with the private vices of great men. He expects a morality which worldly wise historians and men of affairs will not require from these men who have temptations thrown their way more than the ordinary and not dreamt of by a self-satisfied and secure bourgeoisie. Alexander's drunkenness and Caesar's dalliance with Cleopatra mark them down in Mr. Wells's eyes as mere sentimentalists. If historians were to judge of the worth and value of statesmen and their achievements by their sexual morality, there would be few statesmen left in history. Certainly the moral character of statesmen influences considerably their capacity for rendering service to their kind. But we must take men, especially statesmen, as they are and see how far their moral weaknesses prevented them altogether from being useful to their States and the progress of the world. Alexander's drunkenness, no doubt, frustrated his scheme of political organization, but Alexander might have been as easily cut off in the prime of his youth by a fatal shaft from an enemy's bow in one of the numerous battles which he fought, as in one of the bouts of drunkenness in which he indulged. Alexander's work for the world, as of all great men, must be judged by what he actually thought and did for it, not by what he might have achieved if he had not cut himself off from the world by his drunkenness. And was Caesar's middle-aged dalliance with Cleopatra so world-shattering as Mr. Wells thinks it was? It did not stand in the way of any one of Caesar's policies or any one of his achievements. Caesar's adoption of the monarchical idea, his subjecting himself to being treated as a god, is dismissed as "the symptoms of a common man's megalomania."



Mr. Wells does not realize that Caesar brought entirely new things into the course of human history.<sup>1</sup> Was not his victory over his rivals a victory of the people over a sectional oligarchy and an equestrian plutocracy? Did not the age-long struggle between Optimates and the proletariat come to an end when the triumph of the proletariat was gained by the armies of Caesar? Did he not use his victory with supreme statesmanship for the rebuilding of the Roman State? His mildness in the treatment of rivals and rival parties, which was politic and not natural and which aimed at their reconciliation, was the mark of great statesmanship. Cicero, no partial critic, said, "You alone, Caesar, did in your rivalry kill none unless he was in arms." His statesmanship was also revealed in his upholding the things that had been done by his predecessors although they had been his rivals and the enemies of his cause. He upheld all of Sulla's confiscations of property. The statues of Sulla and Pompey, which, after the battle of Pharsalia, had been thrown down from the tribunes, were restored to their places by Caesar's orders. It is true he did his best to end the republic. But the republic had been weighed in the balance and had been found wanting as the guardian of peace and security for the State and of prosperity for the common people. It cumbered the ground and Caesar gave it the push that sent it crumbling down. How can Mr. Wells, who has always treated out-of-date institutions with scant courtesy, blame Caesar for giving the republic the quietus that it had long deserved? And how can he who always expects results from every idea and every institution regret the disappearance of the effete Roman republic?

The man who organized the transfer of government from a bourgeois Senate to a tribune of the people, who abolished the old etiquette of official promotion, who threw open the career of public service to freedmen and low-born clients and who had the courage to reduce the proletariat beneficiaries of

<sup>1</sup> See a fine description of Caesar's statesmanship in Roscher's *Politik*, from which the view in the text is taken.

free corn from the number of 320,000 to 150,000, who dared to assume the details and ceremonial of royalty in the teeth of a seething but futile republicanism and received sitting the Senate that conferred decrees of honours upon him—this man could not have been a poltroon. The man who thought and planned the order of succession and the education of his successor in the arts of war and government, who organized and disciplined with an iron hand, who mercilessly punished mutineers, as of the 9th Legion at Placentia or of his favoured 10th Legion, who took wise precautions to prevent a repetition of his own violent and revolutionary career by his directions that no successor of his should hold a praetorian province for more than a year or a consular one for more than two years and by not trusting much any of his legates, so that when Labinus went over to the enemy, not a single plan of Caesar's had been known; the man who provided for the future in such a way that the polity founded by him endured for centuries—this man could not have been the effeminate dodderhead that Wells would have us believe him to be.

Caesar was one of the greatest statesmen and saviours of society that the world has known. He was also one of the greatest sons of men. As a soldier he distinguished himself by his personal bravery as at the naval battles of the Dyrracchium and Alexandria or at Mund, where he fought on foot and without helmet, so that his soldiers might see him taking risks. As a general his strategy was brilliant for he acted on the principle that he should be in a place before the rumour of his going there had reached the enemy. Cicero and Antony knew well the *celeritas caesarina* and fifty is the number of battles he is said to have won. As the organizer of victory and the master of circumstance he has few equals in history. As orator and writer he was among the greatest of the Romans. It was not the Roman army, but it was Caesar that conquered Gaul, said Napoleon, and Napoleon ought to know. And this is the man whom Mr. H. G. Wells throws on the scrap-heap of history because he did things which Mr. Wells does not like.

The truth of the matter is better expressed by Roscher, a much greater historian, who says: "We have to do here with the greatest monarchical talent of all times, whose name even now after nearly 2,000 years, amongst Slavs as well as Germans, imports the highest worth in all the world."

#### NAPOLEON

The last of the great men of history against whom Wells tilts is Napoleon. To him Napoleon is only a wrecker and an adventurer. "A dark little archaic personage, hard, compact, capable, unscrupulous, imitative and mostly vulgar"—that is Mr. Wells's description. There was nothing in him of the genius about which historians write so glibly in the decision to conquer Egypt. Napoleon, says Mr. Wells, could do no more than strut upon the crust of his great opportunity like a cockerel on a dunghill. His work of organizing France after the Revolution was all imitative, by no means original. His network of roads was an old scheme of Louis XV; canals he adopted from England. Paris he made to resemble Rome with classical arches and columns; his banking schemes had been ready-made for him. All these things would have happened in France if Napoleon had not been there. The *Code Napoléon* was not his work, but the work of his Council of State. There was "little reason in his foreign policy that flogged Europe into a fresh cycle of wars." As for his personal and private life, Napoleon was a criminal, a perfect scoundrel.

What, then, would Mr. Wells have had Napoleon do? After having saved the republic from its enemies from within and without "Napoleon," suggests Mr. Wells, "should have restored the republic and retired to Corsica." But who would have taken charge of the republic? A government like the Directory, from whose futility and incompetence Napoleon had saved France, was hardly likely to do better after Napoleon than before him. The republican form of government especially requires an atmosphere of peace, and with the *émigrés* still waiting at the frontier, with the Allies watching for the oppor-

tune moment to pounce upon France, with orthodox Catholics estranged from the Revolution by the civil constitution of the clergy—one of the supreme blunders of the Revolution—with the orgy of clubs and petitions that drove France to distraction, with the persons trained in administration fled from the country—according to Madame Roland, only pigmies were left in the country—and with the land torn by factions and strife, it was hopeless to save France through a republican and popular form of government.

In such circumstances the heir of the republic, which could no more be kept afloat, was a victorious general. What an idea, said Napoleon in 1797, to think of a republic of thirteen million men! The victorious general need not necessarily have been Napoleon. It might have been Moreau, but he was too indecisive in politics to act the part of a saviour of society. Hoche was too far gone a republican, who, according to Roscher,<sup>1</sup> might have, if he had lived longer, thwarted Napoleon's Caesarism. Napoleon stepped into the vacuum that had been created by circumstances. His acts were determined by events, and therein he proved the statesman and saviour of whom France was in desperate need. He was a Jacobin when Jacobinism reigned supreme and seemed to be the hope of the country. His expedition to Italy, upon which Mr. Wells throws so much contempt, was, according to Roscher, based upon a proper appreciation of the French character, which was impressed by the genius of the man who afterwards claimed to be its leader and guide. As organizer of the French State he translated ideas into action, ideas which, no doubt, had been thought by others. But when has it ever been thrown up against the statesman that his ideas were not his own? Is it not the mark of a statesman that he organizes the ideas, his own or other men's, into reality? Has he not to be original only in action? And Napoleon was certainly original and successful in action. He succeeded when the statesmen of the Revolution, when the greatest among them, even Carnot, had failed. It is true that he assumed supreme

<sup>1</sup> *Politik.*

power, but that was because the multiple holders of supreme power before Napoleon had made a hash of things. The liberator of a country—we have Frederick II of Prussia's word for it—has the right to be its ruler.

Cambacérès, who knew more about Napoleon's work than Mr. Wells, once said to Napoleon: "Your Majesty brought back victory under our banner; you have established order and economy in public expenditure; the nation under your guidance has resumed confidence in itself and the people, whom civil effervescence had rendered indocile to every restraint, and the enemy of all authority was made to respect a power which is exercised only for its glory and its repose." The wonderful resuscitation in 1803 of the currency system of France, degraded by the paper issues of the Revolution; the three laws of apprentices and of the Conseil des prud'hommes, which, according to the great economic historian Roscher, extricated French industry from the chaos of anarchy into which the Revolution had brought it; the gift of the *Code Civil*, which rescued the civil and social life of France from the restlessness of the Revolution, and, in fact, realized the social ideal of the Revolution; the restoration of the Church, ruined by the Revolution, to a part of its place as the moral leader of the people, albeit under the tutelage of the State—was not all this the work of a statesman of the highest order? And his wars, was not every one of them, except the supreme blunder of the Spanish War, as is recognized by modern historians, heir and continuation of the wars of the French Revolution? And was not his foreign policy the counter-irritation to the irritation furnished by the *émigrés*, their allies and the other enemies of France?

It is true that the great things that Napoleon did for France were done with the aid and advice of men, some of them perhaps abler administrators than himself. But it is only a fool aspiring to be a statesman who would try to do everything himself. It is also true that these things were done by Napoleon as an absolute ruler and as a means of strengthening the

foundations of his Empire. Well, there is a price to be paid for every reform arising out of revolution, and the price of Napoleon's despotism the French cheerfully paid, as was proved by the plebiscites that approved Napoleon's constitutions. And Napoleon's despotism was necessary as every other expedient to organize the results of the Revolution had ended in failure. Also, but for the discipline and administrative order of Napoleon's rule, neither the constitutional monarchy of the Restoration nor the Republics of later times would have been possible.

Against all his achievements there is a counter-charge. Napoleon was vainglorious and selfish. He was ambitious. This charge of personal ambition is one that Mr. Wells is fond of levelling at the great men of history. What, indeed, does this charge of ambition mean? If it means anything reprehensible, it is that these great men did the things they did to make a profit out of them. What personal profit did Alexander or Julius Caesar or Napoleon make out of their ambitions? If any one of them, after reaching the height of his desires, had retired into private life to enjoy in security and leisure the spoils of his ambition, his ambition might be thrown in his teeth to condemn and blast his reputation. But these men were running risks of murder, deposition, or exile every moment they stood in their lofty positions. They had given hostages to fortune with both their hands. If they were not ambitious for themselves they were ambitious for their States. They were not even ambitious for personal fame and glory, for the fame and glory of statesmen are in posterity's gift. It is only military glory that can be won in one's lifetime. If it had been at mere personal glory that these men aimed, Alexander should have drawn back into private life after Arbela; Julius Caesar should have gone back into private life, like Cincinnatus, after the defeat of Pompey, and restored the government to the bankrupt, Optimates; and Napoleon should not have gone to Moscow. But it was the demoniac genius of their country that drove them to put their personal fortune to the touch and risk all,

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life being the least of them, personal fame, the goodwill of contemporaries for the sake of the State whose destiny fate had put into their keeping. We may not condemn the work these men did as statesmen merely because they were not faithful husbands, good fathers or pious men. We must condemn them as men for their private vices and failings, but this must not detract us from the tribute that is due to them as heroes and saviours of the State.

### MAN, SAVIOUR OF DYING STATES

The careers of men like Alexander the Great, Julius Caesar, Napoleon, show how necessary the action of a man is to save a State that is *in extremis mortis*. In that stage, institutions, laws, customs, administrative orders seem to be of no avail. The sap of life seems to have gone out of these States. They are passive, inert, they can do nothing. They cease to work, or if they go on working they do so only to the further degeneration and ruin of the State. Ideas, however inspiring, cannot do such societies much good. Those are times when, as Tallyrand put it, what principles cannot do a man must. A man must come along to rescue the State from its own devices, beat down the fetters that have been forged round its feet, and set it on its legs again. All States that were about to topple down have been saved by men. From Hwang Ti, who rescued China from the chaos of feudal anarchy in the last century of the pre-Christian era, to Lenin and Trotsky, who rescued Russia from the chaos which the breakdown of the Tzarist régime brought about, and to Mussolini, who saved Italy from a bankrupt and futile parliamentarism in the twentieth century of our era, States have been saved from extinction by men. But this service of individual man to the State in its last-but-one hour is only a striking example of the services ever rendered by him to the State.

### MAN AS MAKER OF THE STATE—THE TESTIMONY OF LEGEND

States have not only been saved from death, but they have been first imbued with life, not so much by institutions or



laws as by men. Legend attributes the formation of most States to a man. Manu, and Cyclops or Theseus, or Romulus and Remus, were the legendary begetters of States. The practice of compulsory kingship and of the divinization of kings among savage tribes shows the primitive need for men to make the primitive State. In India, whether kindred groups shall develop into clans and clans into tribes has depended very much "on the strength and energy of their founder."<sup>1</sup> Sir James Frazer has also shown how it was with the coming of the gods with a personality of their own that the reign of magic or unreason gave way to the reign of religion, and that the vast majority of the "deities enshrined in the dim light of temples have been nothing but the ghosts of dead men." Nor can it be forgotten that the great religions of the world, like Buddhism, Islam and Christianity, which have won for themselves a permanent place in the affections of mankind, have been founded by individuals who by their personal life and example exerted a power of attraction such as no cold abstraction nor pale products of collective wisdom or learning could ever exert on the minds and hearts of humanity.<sup>2</sup>

#### TESTIMONY OF HISTORY

The testimony of legend is confirmed by the records of history. Sargon I, about 2500 B.C., united the Semites and Sumerians and founded the Sumer-Akkadian empire, perhaps the first of the empires of history. Assyria as a State was founded about 1200 B.C. by Tiglath-Pilesser I. The history of Egypt is largely the history of the Pharaohs and their works. China was centralized 247-246 B.C. under Shi-Hwang Ti, the builder of the Chinese Wall and others of the Ts'in dynasty. Lycurgus gave Sparta a constitution and Solon begins the history of liberty in Athens. Successive landmarks of Athenian history are marked by the career of great personalities like Themistocles, Cleisthenes, Aristides, Pericles. It was a man that united

<sup>1</sup> Alfred Lyall, *Asiatic Studies*, First Series, ch. VI.

<sup>2</sup> Frazer, *The Golden Bough*, Part II, Vol. II, pp. 159-160.

Greece for the first time and led Hellenism on its onward march to the East. The pages of Roman history are full of doings of men—the Reguli, the Seipios, the Catos, the Gracchi and the Caesars. The Roman State was made by Roman men at first and only later it was consolidated and ruled by Roman law and institutions. And Ihering has shown how it was individual force that was the origin of Roman Law<sup>1</sup>—*Persönliche Thatkraft die Quelle des Rechts*. And when from the ruins of the Roman empire there emerged the new States of Europe, they did so under the auspices and guidance of men. France rose with Clovis, Germany with Charlemagne, Hungary with St. Stephen, Poland with Miscislav, Russia with Rurik, Bohemia with Boleslav. At every important stage in the history of each of these States does a man appear as its leader. England is remade by William the Conqueror, the French monarchy is sanctified by Louis the Saint, the holy Roman Empire is illustrated by the careers of a Frederick Barbarossa and a Frederick II. Modern, like mediaeval, States have been made by individual man. Prussia was made by a succession of Fredericks, the German Empire was made by Bismarck, Italy was made by Cavour and not by the ideas of Mazzini.

MEN CARRY STATES FARTHER THAN PEOPLE

It is man that makes and re-makes States. Men of genius carry their States much farther than their peoples. While the Greeks were content to repel the Persians, Alexander carried Greek armies and civilization into the enemy's country. Darius extended the Persian dominion to Scythia, Cambyses into and beyond Egypt. The French Republic congratulated itself on the fact that it saved France from conquest by the allies. But it was Napoleon that bore the French standards to Moscow and the deserts of Africa. It is man also that unmakes States. The indolence of a Rehoboam or a Louis XVI, the hesitancy of a Tzar Nicholas II, lost their State to revolution.

<sup>1</sup> *Geist des Römischen Rechts*, Vol. I.

## MAN AS MAKER OF THE STATE

### LEADERSHIP OF A MAN NECESSARY FOR THE STATE

Men will be ruled by man. Men organized for social life, that is, for active social life, for a life of progress and of action, require leadership. It is only societies that are passive and stationary that can do without leadership. Institutions and customs and unchanging laws will do for the life of such societies. Their history, like the history of Egypt, China and ancient India, is poor in personalities. The great statesmen of these countries can be counted on the fingers of one's hands. The historical personalities that we meet on the stage of the history of these peoples flit across it in the shadowy figure of Amurath succeeding Amurath. But every kind of State which lives the life of activity and progress requires leadership. It is not for nothing that Ecclesiasticus bid us praise famous men, for "they bear rule in their kingdom, men renowned for their power, giving counsel by their understanding and declaring prophecies, leaders of the people by their wisdom and by their knowledge of learning, meet for the people, wise and eloquent in their instructions."

### A HISTORY OF LEADERSHIP

The primitive State is not only personified, but lives in its chief, the haeretoga, the leader of the host, as he was called among the Anglo-Saxons. The leader of the primitive tribe is chosen for his personal qualities of leadership. The monarchical headship becomes institutional after a time when the monarch has come to be looked upon as the leader of the people. A republic elects its leader, but follows his lead as long as he is the head of the State. Most of all does the progressive democratic State require competent leaders. The small democracies of the Greek city-states could not have done the things they did without leaders and the Athenian democracy in its prime and in the zenith of its strength was willing to be led by Pericles.

## THE MAKING OF THE STATE

### LEADERSHIP IN THE MODERN STATE

Leadership is still more primarily required by modern democracies than by the democracy of the city-state. The modern democratic State is so large, so populous and so heterogeneous that it will act only under the personal and magnetic leadership of an *anax andron*. Law and institutions are no doubt required for the modern democracy, but laws and institutions and organization can only keep democracy just alive. To make it do and act, men are needed. Ideas may wing a State into action, but this action is bound to be irregular and infrequent and ill-timed unless it is guided by the genius of leaders. The organization of a modern State is so complex, its mould, to ensure safety, has to be so rigid, the conduct of its organization has to be so much a matter of routine and mechanical regularity, that unless it is played upon by the action, the imagination, the conquering vision, the practical and realistic ambition of its leaders, it is bound to wallow in the swamps of stagnation, or become as petrified as the States of ancient Egypt or China. Who can break through the routine of modern bureaucratic administration, the iron organization of modern parties, the formalism of modern society, except men of courage and wisdom? Who can train and tame the creature except the creator? The provision of good leadership for the modern State is one of the most important political problems of to-day. The finding of good leaders has always been a difficult matter, but the difficulty becomes greater when the range of choice is limited and the number of the choosers is legion, as in a modern democracy.

### QUALITIES OF LEADERSHIP

First of all, what are the qualities of a good leader? Character is necessary, first and foremost for the government of a democracy. In administration as in war, said Napoleon, it is necessary to put forward character. The new art of commanding requires that the people should be led and governed by assent and acquiescence. The leader must be respected and trusted

and loved and no man can be loved and respected if his character is not compact, his emotions are not disciplined and his will cured of selfishness and inspired by love for his fellowmen. The art of managing men is necessary in the modern leader. Tact, respect for one's fellowmen and the art of persuasion are necessary for present-day leadership. Decision is a supreme need, the great leader must be a man of will. M. Necker could not help admiring in Napoleon "that proud force of will, which saw everything, ruled everything and which could move onward or stop short at pleasure." "And this," said the statesman who had not as much of it as his times needed, "is the all-important quality necessary to govern a great empire."<sup>1</sup> Men of indecision like the Girondins lose much more precious things than their own lives. It is not a Brissot who could trust everyone that would speak him fair, or a Vergniaud so indolent that he yawned clients away when he was not in need of money, or a Barbaroux, too much of a philanderer to attend a critical meeting of his fellows, that could save themselves or the ideas or the causes that are entrusted to them. Courage is required of a leader, courage to choose a path and courage to command the necessary means. Nor is physical efficiency to be despised in an aspirant to leadership. It is not a Louis XVI, with all his goodness and sincerity, sleeping at the council table and yawning an answer to a question,<sup>2</sup> that could be the leader of people in difficult times. "Le gouvernement du royaume," said Richelieu,<sup>3</sup> "requiert une vertu mâle."

Knowledge also is necessary for the ruler of a modern State if he is to cope with the work of its government. If, in addition to the knowledge of the educated man, he possesses that knowledge of the history of his country and of the world, of the social and economic questions of the day, he will be considerably helped in the government of his State. Especially to the leaders of modern democracy, numerous and ignorant, is the Psalmist's

<sup>1</sup> *The Salon of Madame Necker*, Vol. II, by Vicomte d'Haussonville.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Testament Politique*.

advice addressed: *Et nunc reges intelligite; erudimini qui judicaris terram*. But although knowledge, even technical knowledge is necessary, the leader must not lose himself in details. The great statesman must be, as Maurois<sup>1</sup> puts it, a technician of general ideas and not of details. It is said of Napoleon that there were men in each department of his government who had a much deeper knowledge of the questions at issue than the emperor, but that if he were not there, the discussions would go on endlessly and nothing would come of them. The great statesman knows how to control details and does not lose himself in them.

Not only knowledge of the past and of the present, but a vision of the future, must inspire the thoughts and deeds of the true leader. "Imagination governs the world," was a maxim of Napoleon. The true leader must see ahead of his people. The leader is not a man, who, to use the expressive similitude of Captain Maurois, advances through country already mapped out, but leans over the brink of an obscure abyss in whose depths are just discernible the vague and inchoate forms of the future, rough-hewn shapes, which, if it be his will, he may chisel as he desires and, taking his stand before the dim abyss, he throws bridges across, collects his materials and is the architect of his own life and of other people.<sup>2</sup> Like Napoleon, he always lives at least a couple of years ahead of his people. Facts and vision, therefore, go to the intellectual make-up of the true leader. Practical idealism is the principle of his policy. A great statesman is like Achilles, born of a mortal and a goddess. The heart of a statesman, advised Napoleon, ought to be in his head. The great leader is a creator, who creates, not out of nothing, but out of what he finds about himself. His eyes are fixed on the stars, but his feet are planted firmly on the ground. He distinguishes between the extraordinary and the impossible, to use the fine distinction of De Retz. "The one defect of Napoleon," said a contemporary, "and the one thing that brought about his downfall, was that he never discerned

<sup>1</sup> *Captains and Kings*.

<sup>2</sup> *Ibid.*

the limits of the possible." The true statesman must have what Cavour called *le tact des choses possibles*.

Next to a knowledge of things as they are and a vision of things as they ought to be, experience in the management of affairs is necessary for the modern leader. For government is a business and an art and not a mere academic exercise. Not mere imagination, but efficient handling of men and affairs is required of the democratic leader. A true leader will never disdain to learn from his subordinates. Good generalship, as the lieutenant says in Maurois' brilliant dialogue<sup>1</sup> on leadership, although imperious in action in a modern democracy, does not need passive, servile obedience. It requires willing, cheerful obedience obtained through tact, understanding and sympathy. The great leader is not obeyed out of fear, but out of affection.

#### THE MAKING OF LEADERS

How to get leaders possessing the qualities of leadership, men of character and of knowledge, men of action, of vision and practical experience, is one of the most anxious problems that confront modern democracy and press for a speedy answer. The leader of a democracy has to be elected. Elections have to be organized and party organizations are the most frequent and the most powerful means of organizing an election. The party organization may not always select and run the best candidates. For social intrigue, personal jealousy, the influence of money, or at the best the winning chances of the candidate may settle whether he is selected or rejected. Many means have been suggested for the reform of elections and of electoral organizations. If democracy is to govern, its selective capacity must be trained. "Régner, c'est choisir," as Louis XIV used to say. But the one sure means is the reform of the electors, for the health of the State depends not only on the excellence of its leaders, but on the worth of the ordinary individuals in it.

<sup>1</sup> *Captains and Kings*.



## THE MAKING OF THE STATE

### THE MAKING OF THE COMMON MAN AS NECESSARY AS THE MAKING OF LEADERS

There should be soundness not only at the top, but at the foundations of the State. It is the shoulders of the common man that bear the State and if they are strong, the State is well supported and well organized. It is able to march towards progress and liberty under the guidance of wise and competent leaders. It is about and around individuals that the State turns.

“Not high-raised battlement or laboured mound,  
Thick wall or moated gate,  
Not cities proud, with spires and turrets crowned,  
Not bays and broad-armed ports  
Where laughing at the storm rich navies ride,  
Not starred and spangled units  
Made the State, but men—high-minded men.”

The individual lives and acts, no doubt, as a member of a group or a community and it is only a State that is built of groups and individuals that has the consistency, the solidarity and grit that keeps it whole and entire. But the health of the group or community hangs on the health of the individual. It is with the individual that the life and activity of the State are concerned. It is when the individual men of a State begin to be selfish, indifferent and effete, that the State begins to decay and totter.

### ORGANIZATION OF THE INDIVIDUAL

Every reformation of the State, as of religion, has to begin with that of the individual. For the organization of the State, the organization of the individual is necessary. The individual, as F. W. Förster puts it, is the real organizer of political culture. That the social solidarity of the State may be maintained, the character of the individual must be formed. The enemy of social solidarity is the selfish impulses of the individual. For the proper organization of the individual, which is antecedent to the proper organization of the State, suppression of the anti-social impulse in the individual man is necessary. His pre-

occupation with himself and his needs and his wants must be reduced and he must be made to think of others, his fellowmen, his society and the State to which he belongs. The interest of the public, even Richelieu acknowledges, ought to be the sole end of rulers. It is only when the will of the individual is moved by the purpose of society and of the State and when individual impulse is allowed to be controlled by the needs of the State, that real social solidarity can be said to be secure and the State can be said to be sure of its health. The essentially social ideals of *Bushido*, with its insistence on loyalty to society and State, self-sacrifice, filial piety and simple living, have enabled Japan to achieve independence and progress. Man must give up thinking individually and learn to think politically. Especially, free and constitutionally governed countries require, as Montesquieu<sup>1</sup> pointed out, a continual preference of the public interest to individual interest. As F. W. Förster puts it, it is only when the will to objectivity frees itself from subjectivity that the State can be said to be founded. And as he advises, the education of citizens towards this objectivity is the chief means of strengthening the life and promoting the welfare of the State.

#### EDUCATION FOR THE STATE

Education in the modern State is concerned overmuch with the business of equipping youth for the purpose of earning a livelihood. That every system of education must prepare its subjects for life and livelihood, no one will gainsay. But man is not only a breadwinner, but a member of the State. His education ought therefore to fit him for membership of the State. His education ought to help him to live as a member of a social group, to suppress his egoistic impulse, to give and take from his fellow-men, to subordinate his will to the needs of the larger group to which he belongs. For it is the nature of men, says Machiavelli,<sup>2</sup> to be bound by the benefits they confer

<sup>1</sup> Montesquieu, *L'Esprit des lois*, Liv. IV, ch. V.

<sup>2</sup> *The Prince*, ch. 10 (Everyman's Library edition).

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as much as by those they receive. Education for citizenship is largely an education of the social character of man, so that it could enable him to live in peaceful and useful fellowship with his fellow-citizens. It does not consist of the so-called civic education which is often believed to consist in the imparting to immature youth a certain number of opinions on the history, geography, government, institutions and foreign policy of the State. No amount of historical or statistical information will convert a selfish, egoistic, self-centred youth who has been allowed to prefer his own pleasure and self-indulgence to the honour of the school or the needs of his family into a social being. The selfish workman or the self-centred capitalist is not going to take the patriotic view in any industrial dispute merely because his mind has been stuffed with much information on the past achievements and the present progress of his country.

## THE MAKING OF THE CITIZEN

Character is the one thing necessary in the education of the citizen. The character of the individual must be trained and educated for social purposes. Socialism and Communism and other advanced social theories introduced among individuals not prepared for them will only be another kind of machinery to be used by anti-social individuals for anti-social ends. Where Communism has succeeded, as in early Christian communities or Catholic religious orders, the will of the individual had been trained to complete subordination to a social purpose. Not the socialization of property, but the socialization of the individual, as Miss Follett<sup>1</sup> contends, is the remedy for modern social ills. But it is not mere altruism as the same writer brilliantly argues in her remarkable book, *The New State*, that is going to free us from the evils of Socialism. Altruism may mean mere selfish enjoyment as is illustrated in the slumming of Mayfair ladies or the philandering philanthropy of American millionaires. The self-and-others illusion, as Miss Follett<sup>2</sup> calls it, has to be

<sup>1</sup> *The New State*.

<sup>2</sup> *Ibid.*

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guarded against. The real social education of the individual consists in training him for the service of the group, the society and the State to which he belongs. Individual men thus formed and educated can be trusted efficiently to elect their leaders. And furnished with such leaders, commanding such followers, both educated for Society and for the State, the modern State could march towards the future sure-footed and confident of realizing its ends.

## XI

### THE COMMUNITY OF STATES

G || "Human society resembles an arch in which the individual stones hold each other, and thereby determine the stability of the whole."—WLADAMIR SOLOVIEV.

Cardinal Newman, in one of the most beautiful passages of his writings,<sup>1</sup> describes the way in which the child's eye first takes in the impressions of the world around it. "It has often been observed," he says, "that when the eyes of the infant first open upon the world, the reflected rays of light which strike them from myriads of surrounding objects present to him no image, but a medley of colours and shadows. They do not form into a whole; they do not rise into foregrounds and melt into distances; they do not divide into groups; they do not coalesce into unities; they do not combine into persons; but each particular hue and tint stands by itself wedged in amidst a thousand others upon the vast and flat mosaic, having no intelligence and conveying no story any more than the wrong side of some rich tapestry. The little babe stretches out his arms and fingers as if to grasp or to fathom the many-coloured vision, and thus he gradually learns the connection of part with parts, separates what moves from what is stationary, watches the coming and going of figures, masters the idea of shape and of perspective, calls in the information conveyed by the other senses to assist him in his mental processes and thus gradually converts the kaleidoscope into a picture." Similarly, it is only gradually that on the eye of political man has dawned the idea of the separate and individual existence of States. To the primitive man naught exists but his own tribe. If other tribes existed at all they belonged to his immediate neighbourhood and they had no right to exist together with his. They appeared to him in such a misty haze that he would

<sup>1</sup> *The Idea of a University*, Part II, ch. IV, on "Elementary Studies."

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not recognize their right to exist. They were too vague to be recognized. For at the worst he tried to get rid of them and at the best lived in splendid isolation from them.

### NO COMMUNITY OF STATES IN ANCIENT TIMES

Not only to primitive tribes, but to the peoples of ancient times, other States either had no right to exist or were a good target for their wars as it seemed to the peoples of Mesopotamia, or they lived in disdainful isolation from them as the Egyptians, the ancient Hindus, and the Chinese. Peru and Mexico, although they were great empires separated from each other by only two or three small tribes, knew nothing of each other. Among the peoples of antiquity international relations were few and far between. Peace treaties were unheard of, although the famous peace, the first diplomatic document of history according to de Morgan,<sup>1</sup> concluded about 1250 B.C. between Egypt and the Hittite Empire of Asia Minor has a modern ring about it, with its commercial and extradition clauses. Of the ancient Hindus, says Sylvain Levi: "Ses traditions consignées dans l'immense littérature des Brahmanes ne savent rien de précis sur le monde environnant."<sup>2</sup> Among the Greeks all other than Hellenic States, barbarians, as they were called, had no claim to the title of State. The Romans would not allow any other State to exist. Not only tribes, but fully formed States like Carthage, Macedonia and Egypt had to go down before them. It is true the Romans built up a *jus gentium*, but it helped them only to rule the non-Roman peoples they conquered, whereas what is wanted for the governance of international relationships is not a *jus gentium* but a *jus inter gentes*.

### NOR IN THE MIDDLE AGES

Even in the Middle Ages of European history the idea of a world consisting of a number of separate and equal States

<sup>1</sup> *Les premières civilisations*, ch. IX.

<sup>2</sup> "L'Inde et le monde," in *Revue de Paris*, 1st February, 1925.

living in peaceful relationship with each other was not full-born. Not that there was no community feeling between the States of mediaeval Europe. The fact of Christendom, the institutions of the Papacy and the Holy Roman Empire, brought the ideas of community home to mediaeval Europeans. But real fellowship is possible only between grown-up persons. Children do not make lasting friendships. It is only with the development of individual personality that social fellowship arises. The fellowship of States was not accomplished in the Middle Ages, for the States were then all the time in the making. It was not till the end of the Middle Ages that most of the States of Europe were fully formed. France did not become united and consolidated till the end of the reign of Louis XI (1461-1483). Spain became herself only with the fall of Granada in 1492. Norway and Sweden and Denmark were not able to extricate themselves from each other till 1570. Bohemia and Poland and Hungary had been formed in the Middle Ages, but their unity and their very life were precarious. Russia, which had been proceeding towards formation ever since the coming of the Varangians in the tenth century, came, in the fourteenth, under the yoke of the Mongols who, instead of proceeding with the consolidation of the country, merely camped on Russian territory till they were expelled. Serbia and Bulgaria, which had been independent States in the early Middle Ages, had towards the end become part of another and alien empire. For a long lap of the Middle Ages Europe had been divided between a Western and Eastern Roman Empire. It is true that these empires were not well-obeyed for any long period of time, but the imperial idea, however ill-executed, hardly encourages the recognition of separate individual States.

In the Middle Ages, although the peoples were bound together by religious and moral unity, there was little or no room for peaceful intercourse or even a warlike relation between States. The States were busy with their own business, the business of realizing their internal solidarity, of building



up a system of efficient administration for themselves. They had little or no time or energy for entering into relationship with other States. Even the wars were few and infrequent compared to the wars of modern history. The wars that were waged were generally civil feuds, or when waged between different countries were family or dynastic quarrels and not political wars. The Hundred Years' War between England and France rose out of a property claim instituted by the king of England against the estate of a French king. That was not a national war, as was proved by the fact that French parties like the Burgundians and the Armagnacs helped the English. The wars waged by the Holy Roman Emperor against the city-states of Italy were looked upon by both sides as the castigation administered by a father to members of his family. The mediaeval wars in the modern sense were in the form of crusades against aliens in religion, like the war of the Spanish against the Moors in Spain, or the Crusades, especially so-called, against the Saracens in Palestine.

There was very little intercourse between States in the mediaeval period. Ambassadors and embassies were almost unknown. The only international intercourse there was, was rendered possible by ecclesiastical organization and by the universities. The distinction between domestic policy and foreign policy, between the home department and the foreign department of modern times was foreign to the Middle Ages. In fact, there was little foreign policy in a mediaeval State, and when foreign policy arises, it was treated as part of the domestic government. Cardinal Wolsey wove and unwove the web of his foreign policy as Lord Chancellor of England. The material cause of this lack of international intercourse, the want of good communications in the Middle Ages which were not able to keep up the tradition and the heritage of the Roman road was only part of the larger and original cause, namely the preoccupation of the mediaeval State with the business of forming and consolidating itself. It was only when that work was finished by the end of the Middle Ages

that the need for the intercourse of States began to be felt and means were found to realize it. International law had to wait for international intercourse between separate and independent States. The idea of the community of States had to wait for the formation of States.

### COMMUNITY OF STATES A MODERN PHENOMENON

The history of the fully formed State in Europe as well as the history of international law begins, by no means accidentally, with the end of the Middle Ages and the inauguration of the modern period of European history. Modern history, however, began badly for international intercourse and the community of States. For it began with religious division. But it was this very religious division coming upon a number of fully awakened and adult States that made it an imperative necessity to build up a code of customs or laws that would put the relationship and intercourse of States with each other on a peaceful footing. The States had been brought to life, opened their eyes, and began to look at each other. They began to covet each other's territory and flare up at each other's religion. Trade and commerce were bringing them into frequent contact with each other. New kinds of ships were making intercourse easy between nations separated from each other by great seas. More and better roads and other signs of the reign of peace inside States and the new culture of the Renaissance popularized travel which in the Middle Ages had been confined to churchmen, university students and crusading parties. The awakening of the personality of States led to plans and counter-plans for the acquisition of territory being made. Modern history begins with a series of wars, the Italian wars (1474-1559) soon to be followed (1560-1660) by the wars of religion. Unless the newly formed States of Europe were to go down in bloodshed and kill each other off like the Kilkenny cats, some code of regulation had to be framed for the conduct of their relations with each other. It was from these needs that modern international law was born. It was founded, so far as

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any one man could found a body of law, by the Dutchman, Hugo Grotius. It was proper that a Dutchman should found it, for a small State like Holland had most need of the buttress of law to safeguard its contacts and relationships with other States, most of them more powerful than itself.

### COMMUNITY AROSE WITH EQUALITY OF STATES

It is not without significance that international law began with a discussion of the theory of the sovereignty of the State. For it is only fully grown States that are masters of themselves. It is only States that are sovereign that can make laws to regulate their intercourse between each other, and Grotius deduces his maxims of international law from the rules of the civil and domestic law of States. But he pleads for the governance of international relationships by the idea of natural law and social morality. He believes that peoples, although they form separate societies and States, are not natural enemies of each other, and that even when they are at war with each other they must behave with something of that humanity which is the bond of society. The sociability and fraternity of man should regulate the conduct of States to each other, even when they are at war. Grotius applied the civil law of contract to the governance of the relations between States. In the absence of an institution like the judiciary and a sanction like public force, Grotius had to assert a law of nature to be the court and the dictates of conscience to be the sanction of international law. The work of Grotius was continued and developed by the makers of international law, Leibnitz, Puffendorf, Bynkershoek, Wheaton and others.

### INTERNATIONAL LAW AND THE IDEA OF COMMUNITY

Although the writings of these great jurists built up the body of precepts and obligations known as International Law, it was the facts of history that called for its creation as well as its development. Every chapter of international law, every rule recommended by the founders and builders of international

law can be related to some fact or event in European history or the history of the world. Grotius' *Mare Liberum*, published in 1610, and which declares that by the law of nature the sea cannot be monopolized by any single country and the counter-blast of the Englishman, Selden, *Mare Clausum*, published in 1636, were called for by the increased maritime intercourse and rivalry of the first commercial nations of Europe. Grotius' work, *De Jure Belli et Pacis*, published in 1625, was called for by the horrors of the 'Thirty Years' War, then in full swing, and suggested by the intercourse with non-European peoples with which the Dutch East India Company, like the English and French East India Companies, was making Europe familiar. This intercourse of Europeans with the people of the East had become frequent and lively by 1672, when Puffendorf, in the *De Jure Naturae et gentium*, advocated the revolutionary and fruitful principle that international law is not restricted to Christian nations, since all nations formed part of humanity. The frequent maritime wars of the early eighteenth century led to Bynkershoek's discussion of the position of belligerents and neutrals in sea-warfare. The large number of neutrals that have to look on while war is being waged in a closely internationalized world has called for the development of the Law of Neutrality at the hands of a Hübner and a Wheaton.

#### INTERNATIONAL LAW AND THE FACTS OF COMMUNITY

Rules of international law have been made not only by individual jurists, but by international acts. Many a rule of international law is found embedded in a treaty of peace or alliance. The famous rule of 1756, according to which no neutral State can exercise in war a trade forbidden in time of peace, was agreed to by the Powers during the Seven Years' War. The Treaty of Paris of 1856 laid down the important principles forbidding privateering, and that a neutral flag covers an enemy's goods except contraband of war, that neutral goods except

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contraband of war are not liable to capture under an enemy's flag, that blockades to be binding must be thorough. And the great experiment in international government, the League of Nations, was born out of the Great War and is embedded in a covenant which was part of the Treaty of Versailles.

### COMMUNITY AND INDIVIDUALITY OF STATES

All these facts of history that have contributed so much to the growth of international law also prove the growth and development of the individuality and personality of States. It is as States grow in power and independence that they feel the need for each other. It is a curious and paradoxical fact that it is only when States begin to fight with each other that they feel the need for organizing the life of peace with one another. It is out of the wars and rivalries of grown-up States that international law was forged. When Europe was more united than it is now, when it had such universal organizations as the Empire and the Papacy, it did not feel the need for international peace and fellowship that it desires now. The history of international law shows that the community of States grows with the individuality of States and that international law grows out of the full-blooded life of separate and individual States. And if the history of the past holds any lessons for the future, international relationships will sag if they are not built on the foundation of the fellowship of conscious, independent and sovereign States. To regulate international relationships between States by the concepts and institutions of municipal law would bring them into dire peril. The Holy Alliances, the Concerts of Europe, the Ententes, were attempts at solving the problems of international law by means of sanctions appropriate to the municipal government of independent States. And they have not saved the world from disaster. It is not by suppressing the individuality of States but by moralizing it that international relationships can become a thing of peace and benediction.

## THE MAKING OF THE STATE

### INTERNATIONAL LAW'S SANCTION—THE COMMUNITY OF STATES

It is well known that international law as a means of regulating the relationship of States has always suffered from two drawbacks, the absence of a judicial authority whose jurisdiction would be accepted by all States always and the lack of adequate sanction to enforce the decisions of that authority. International law has been successful only so far and as long as it has been treated as international morality. But its rules and principles, all the same, are binding upon civilized men. The rules of morality, like marital chastity, purity in thought, are binding on the individual, even though there is no judicial authority to denounce, nor any sanction to guard against infringement of these rules. As Sir Henry Maine points out there have been systems of law like the Roman law that have been accepted by peoples without being legislated into acceptance of them. And it is just as well that international law has neither judicial authority nor physical sanction to enforce it. For, apart from the difficulty of creating such a world-ruling authority and a world-commanding public force, it is doubtful whether the legalistic relationship of States to each other will serve the cause of peaceful international intercourse. For law and administration as we see it working in a State preserves only the irreducible minimum of public order, whereas in international relationships, in view of the terrible consequences of disorder, the maximum public order must be maintained. In a State it is only offences that are found out that are punished, whereas between States it is the offences that are not found out that call for condign punishment. It is the hostile attitudes, the secret treaties, the private understandings, the mental reservations that are the greatest offences of international law. War is so terrible a thing that itself is not so deserving of punishment as the antecedent state of mind or attitude that drives one to it. While in individual States it is acts that are reprehensible, in international relationship it is thoughts and

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plans that deserve condemnation. And to this end what is necessary is the awakening of the conscience of peoples, the prevalence of a sense of righteousness and of justice among the States and statesmen of the world. Machiavellism may help to govern particular States, but it is impossible as a code of international relationship. International law is possible as morality, but it is impossible as law.

### FUTURE OF INTERNATIONAL LAW BOUND WITH THE COMMUNITY OF STATES

Nor is there cause for despair about the future of international relationships. The past gives us reason to hope for the future. We have left behind us the times when men ate each other up in war and when persons were killed or converted into slaves, when poisoned arrows were used and wells of water were poisoned, when non-combatants were killed at sight and wars were flung upon people without notice. Atrocities in war happened then as they happened recently in the Great War, but now they are accepted as atrocities and people are ashamed of them even when they use them. Wars are embarked on after some delay, only after the breakdown of diplomatic negotiations. War is still a horrible thing, but the humane treatment of prisoners of war, the work of Red Cross Societies, the benevolence of neutrals, make the warfare of civilized States a distinct improvement on that of savage and barbarous peoples. *Vae victis* may still be the cry of a victorious people, but it means only plunder of territory, financial burdens, loss of power and prestige. It does not mean the extinction or death of whole peoples as it was practised by the cruel peoples of history, like the ancient Assyrians. Mountains of skulls do not mark the path of the victorious conqueror as they did that of Chengiz Khan and Tamerlane or the ancient Mexicans. No one can deny that there has been gain although there is still so much to gain. Progress there has been, although none can rest satisfied with what has been achieved. There is still a long way to go before international relationships can be



said to be on a secure foundation. But the progress that has been achieved so far gives us cause to hope for better things, if not for the best. And the progress of the past suggests the lines on which the progress in the improvement of international relationships may best proceed.

#### THE IDEA OF COMMUNITY NECESSARY FOR INTERNATIONAL PEACE

The peaceful relations between the different States can best be guaranteed only by individual States and their subjects realizing the idea of the community of States. Separate States must be converted to the idea of the community of States. It is by creating the proper frame of mind and attitude of States towards each other that international relationships can be bettered. The attitude of States towards each other must be moralized. First of all nations and peoples must be taught to feel that they belong to one another and to the community and fellowship of States. They must learn to think that what happens to one affects the others, that what hurts one State hurts others and yet others all along the line. The solidarity of States with each other must first be realized by all peoples. They must feel that they belong to the family, the comradeship of humanity. Both in war and in peace States are linked to each other by hoops of steel. In peace the wealth and prosperity of each State is linked up with that of other States. The trade and commerce, the exports and the imports, of each country depend on the trade and commerce, the imports and exports of other countries. India's sun, as Ihering puts it, does not shine for India alone, and the food and raw materials of the tropics maintain the prosperity of Europe. In war the most neutral country, the countries most remote from the battlefields, must feel the concussions and the repercussions of this occurrence. The Great War and the peace that came after proved how the world of States is linked together and bound up with one another. There is not a single State in the world which has not felt the consequences of peace as it had felt the consequences of the war, in changes

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in price, fluctuations in exchange, movements of trade, in the position of industry and agriculture, in its very political and social conditions. Modern war can be localized but not its effects.

### INTER-DEPENDENCE OF STATES

No State is sufficient unto itself. The ancient idea of the *autarchia* of States was peculiar to the times of Aristotle and is out of date to-day. It is true that the will to power of modern States encourages a revival of this ancient idea, but it is a hopeless task. States, large and small, powerful and weak, white and yellow and black, must be treated not as being equal to each other, for that would be flying in the face of facts, but as being equally entitled to good and fair treatment. Each State must be treated as a personality with all the rights of personality. The old idea of fear and suspicion of one another must give way to a new confidence and trust in one another. The old fear and suspicion were perhaps natural at a time when States were just emerging into a realization of their individual personality. At the dawn of modern history, States were like travellers who had met and had been journeying together in the night and in the early morning confronted each other with money and arms on their persons.

This fear and feeling of suspicion led to the invention of some of the early devices of regulating international relationships. The Balance of Power was one such device, since the preoccupation of self-conscious States at the beginning of modern history was to prevent other States from becoming more powerful than themselves. What could be more natural and desirable than that the States should see to it that no one power should become more powerful than the others? This principle of the balance of power explains the course of international relationships in Europe down to the present day. The treaties of peace and alliance made after the Great War show that this theory of international relationships still persists. Another device of international relationships is the system of

alliances. States who had a more or less common objective in foreign policy entered into alliances generally with a view to checkmating the foreign policy of their enemies. Europe was thus divided into groups of alliances confronting each other—triple alliances against quadruple alliances, triple ententes against dual ententes. These devices were based on frankly utilitarian considerations and like most utilitarian arguments they served a temporary purpose, but banked up a wealth of ultimate trouble. They solved, for the time being, the problems aroused by the fears and suspicions of States towards each other, but they converted Europe into an armed camp. Unless, therefore, this theory of the armed camp as a way of solving the problems of international relationships is given up, there can be no hope for the improvement of these relationships. States and peoples must realize that the world is not a camp of armed forces, but a community of States.

#### COMMUNITY OF STATES THE ONLY GUARANTEE OF WORLD PEACE

The idea of community and fellowship of States must be incorporated in the minds of peoples and their rulers. States and statesmen must feel that in their conduct of foreign policy they must serve not only the interests of the State to which they belong, but the interests of the world of States to which also they equally belong. Very often, in fact, almost without exception in modern history, foreign secretaries and statesmen meeting in conference over peace treaties or treaty negotiations view them as a venue for a duel between States. They think that their duty is to squeeze the last ounce of advantage for their States from these negotiations and to surrender any advantage to the other States only to prevent the breakdown of these negotiations. International relationships and agreements are treated as if they were commercial transactions. The very words used in speaking of these transactions show that they are treated as the barter and the exchange of the market place. "Negotiations," "high contracting powers," are terms that smell of the bazaar rather than of courts and embassies.

## INTERNATIONAL LAW NOT TO BE TREATED AS PRIVATE LAW

The vice of the original treatment of international law by Grotius and his followers who applied the concepts and procedure of civil law, especially of the law of contract to international jurisprudence, clogs the footsteps of international relationship. International intercourse to save itself and the world must be treated as a thing belonging to morality and to culture rather than to law. The dictates of morality and the behests of culture should guide the minds of ministers and ambassadors charged with the duty of organizing the foreign relationships of States. They must realize that in their moves and counter-moves they have not only the interest of their States, but the larger interest of the fellowship of States to guard. Treaties and international conventions must be observed just because they belong to the province of morality and culture and because law and sanctions cannot enforce them. International treaties are sacred things and must be looked upon as the very foundation of international intercourse. Not that treaties are unalterable, but while they last, they should be respected and they may not be denounced at the mere will and pleasure of the more powerful of the contracting parties. Treaties are made to bind and not to be bent at a moment's notice and to be got round by all kinds of excuses and explanations. The fate of the treaties so solemnly made by the Congress of Vienna in 1815, which were broken or explained away, has been that of the other treaties that followed it. The idea, therefore, must become universal and popular that if the sanctity and binding force of treaties go there is an end to all peace in international intercourse. Peace can never be when treaties of peace are not meant to be observed as long as possible but to be denounced as soon as possible.

Treaties and international conventions and understandings are aimed at the one object of international and political life, namely, a life and a state of peace. Institutions for the maintenance of international peace have been devised and tenderly

nursed by lovers and organizers of peace and goodwill among the nations of the world. The latest of these institutions and the most important in the history of international intercourse is the League of Nations. The League of Nations bears within it the seeds of life, for it recognizes the free existence and the free consent of individual States as the foundation of international understanding. Article 10 of the Covenant of the League of Nations which guarantees the territorial integrity and political independence of the existing States and Article 26 which requires ratification by every government for amendments to the Covenant and the rule that requires unanimity for a decree of the League to be binding, all these wise provisions save not only the League but the purposes of the League. But Article 16 which, not satisfied with a proclamation of boycott against a member embarking on an unjust war, recommends actual war against the culprit, carries the seeds of future trouble. Only, it is possible that this article will remain a dead letter. But all that the Covenant enjoins for the submission of causes of dispute to arbitration, for wise delay in the declaration of war, for the responsibility of every State for every war that happens, for the advocacy of open diplomacy is pregnant with a promise of peace.

#### THE LEAGUE OF NATIONS

In regard to the League of Nations, however, as in regard to all matters of international relationships, it is not law and institutions that are going to solve the problem, although they are necessary and useful. What is more important for the peaceful development of international relationship is the education of peoples and especially of their rulers into a love of peace as the highest end of international relationships. Tribunals and Leagues of Nations are of no avail when the minds of rulers and people are harping upon war, or at least look to war as the quickest and most capable method of solving the difficulties of international intercourse. The philosophy of international relationships must be changed. The old maxim

was *si vis pacem para bellum* and the nations of the world have jointly abused this means of organizing peace. The result, of course, has been war with interruptions of peace. This old maxim must give way to another suggested by the great German political philosopher, F. W. Förster—*si vis pacem para pacem*. If you wish peace, prepare peace. The minds of States and nations must be directed towards peace not merely as the ultimate goal but as the daily preoccupation, not only as an end but as a means. They must be educated to desire peace always and everywhere, they must be trained to use the methods of peace for the solution of their domestic and international problems. Against the antique notion of Nietzsche who said, "You shall love peace as a means to new wars and the short peace more than the long," and who counselled not peace but victory as the goal of statesmen, must be set the gracious message of Christ, "Peace I leave with you, my peace I give unto you."

#### PEACE AND PACIFICISM

Peace must, however, be distinguished from pacificism. Peace does not mean peace at any price. Peace does not mean a denial of patriotism or a depreciation of the army as a national institution. It does not mean that sickly humanitarianism, which is generally a prelude to the terrible reaction of imperialism as was proved by the fate, during the French Revolution, of the theories of Anacharsis Clootz, the friend of the human race, or by the events that succeeded the sentimentalism that was preached at the time of the opening of the Exhibition of 1852. The preaching of international peace is perfectly consistent with national patriotism and the organization of national defence. Only the patriotism must not be cultivated at the expense of other states or accompanied by hatred of other peoples. The national defence must be treated as a source of defence of the State and not a cause of offence to other States. Peace does not mean that the interests of one State should be sacrificed to the interests of another. But it means that the

interests of a State should not be considered by themselves but together with the interests of other States and with the interests of humanity. Not national egoism, but international solidarity should be a governing factor in the treatment of international questions.

The world must be viewed not as a collection of self-centred and self-sufficient states but as a community of States linked and bound to each other with the bonds of civilization and culture and humanity. And above all must prevail the idea that the government of the world is not the government of chance or force or skill but that it is a moral business. The ideas of peace must be taught to old and young so that the minds of peoples may be soaked in them and they might become their daily companions and inspirers. These ideas must displace the ideas of suspicion, of egotism, of aggrandizement and self-centred activity which have been the curse of the world since States began to know they were States.

#### LESSONS OF THE PAST

The idea of the community of States is charged with a promise for the future for it has been realized in the past. For it is not a new idea altogether and it not only once prevailed as an idea but was realized although imperfectly and fitfully in practice. In the Middle Ages we saw that there was little or no international law, for the subjects of international relationship are States that were then just struggling into existence. But the atmosphere for the successful founding of international relationship existed. The political note of the Middle Ages was universality. The Church was there to bathe all the peoples of Western Europe in the sunshine of unity. The Church gave, however, not merely the atmosphere but the organization of unity. Through the Popes, who were supreme governors of Europe, not merely in ecclesiastical but in secular matters, and advised princes, warning them and sometimes punishing them, through the Roman *curia*, which held in its hands the threads of the *haute politique* of the age and dictated,



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in fact, the diplomacy of Europe through its legatees, who were the only ambassadors and plenipotentiaries of the Middle Ages, through its councils, which were also popular congresses, through the sanctions of the ban and the interdict, the mediaeval Church maintained in actual fact the idea of the unity of Christendom. Through the practice of the Truce of God and of the Sanctuary it helped the realization of the peace of Christ.

## THE LESSON OF THE HOLY ROMAN EMPIRE

By the side of the Church was another characteristic institution of the Middle Ages, the Holy Roman Empire. It exercised a kind of overlordship not at all to be compared to the State sovereignty of modern times, but which was effective in bringing home to the minds of mediaeval Europeans the secular unity of Christendom. Historians have made fun of the ideas and institutions of the Holy Roman Empire and this contempt was crystallized in Voltaire's famous saying that the Holy Roman Empire was neither Holy nor Roman nor an Empire. It was certainly none of those things if we judge the Holy Roman Empire by modern standards. But modern standards are certainly not applicable to it. The fact of the matter is that the Holy Roman Empire was not an empire in the sense in which that of Rome was an empire. The title was adopted because the Roman empire was the only example of an overlordship over more than one people known to the peoples of the middle ages. It was not a State in the ordinary sense of the term. It was a unique political institution, *sui generis*, called into existence by the needs of the time. It was by no means a revival of the Roman empire, as even such a great historian as Bryce would appear to believe. It was an original creation of the Middle Ages. It was one of the memorable contributions of the Middle Ages to the wealth of political institutions.

The Holy Roman Empire was a characteristic creation of the Middle Ages. It was created to meet the circumstances of those times. Only Charlemagne could have founded it

because he, for the first time, brought Germanic and Roman peoples, the two peoples of Western Europe that mattered then, under one sceptre. The later Carolingians fell away from that ideal of European unity, but it was bequeathed to later generations. The home of the Holy Roman Empire was naturally Germany, for Germany formed geographically the middle kingdom of Europe, and its structure was such that it claimed allegiance from a number of peoples who were not germanic by race. It had no mountain or river frontiers and it spread itself, loose-linked, over neighbouring territory. On the west it overflowed across the Rhine, on the east it counted a number of Slavs as its subjects. And its political connection with Rome, to which city the German kings had to go for their imperial consecration, gave it overlordship of the cities and princes of Northern Italy. But it was not the overlordship of an empire that the Holy Roman Emperor exercised in the Middle Ages. It was, however, as Frantz<sup>1</sup> describes it, the keystone of the arch of the whole temporal order of the Middle Ages. It was not coercive authority that the German emperor, the head of the Holy Roman Empire, exercised over the rest of Europe. It was rather a moral authority which was obeyed only so far as and whenever it concerned itself with business like the Crusades, which belonged to the whole of western Christendom. The German emperors exercised an international office unsupported by material force but honoured and obeyed all the same. They exercised just the kind and amount of authority which international law exercises in modern times. As an empire, for the German emperors were also kings of Germany proper, the Holy Roman Empire was neither a State nor an institution but a force and a moral force at that. It cannot be classified under any of the political categories of monarchy or republic, unitary or federal States.

The difficulty which modern historians feel in regard to the

<sup>1</sup> See a brilliant and worthy description of the Holy Roman Empire in his *Naturlehre des Staats*.

Holy Roman Empire arises, as Frantz points out, from the view, popular in modern times, that beside the State there can be no other political institution. This view would deny the title of political institution to any institution or corporation unless it was created by or with the permission of the State. Modern opinion would also find it difficult to accept any supranational institution which does not possess the characteristics of a State. Political prophets like Mr. H. G. Wells can conceive only of a world-State as the institution that will solve the problems of international relationships. But the lesson of the Holy Roman Empire is that for the regulation of international relations no institution built on the model of a State is necessary, or even desirable. For the State cannot be regulated by one of its own species however formidable it may be. It must be regulated by a force superior to it, overriding its limits. And that force must be moral and cultural as was the Holy Roman Empire of the Middle Ages.

This great mediaeval institution did international work of the highest importance. It settled disputes between warring States. It punished States that put the public order of Europe in jeopardy. It stood out as the leader of Europe on more than one occasion. The usual historical account of the Holy Roman Empire narrates only the wars waged by the German emperors against feudal nobles and the city-states of Italy and the Papacy. It speaks little of the life that the Holy Roman Empire sheltered: its brilliant court illustrated by the poets of Germany and the artists of Italy, the rich corporate life of guilds and towns and federations of towns like the Hanseatic League, which would have withered under the centralized monarchy of an ordinary State. We hear little in such accounts<sup>1</sup> of the brilliant chivalry of knightly orders, like that of the Teutonic sword, of the comparatively free life of the peasantry in the lands of the Empire, the democracy of the Frisians on the Elbe and the Weser and among the fastnesses of the Alps. The best Europeans of the Middle Ages, including the Popes, who only disputed

<sup>1</sup> Even the classic work of Bryce.

the claims to supremacy of the German emperors but who, in fact, consecrated the Holy Roman Empire, and represented by men like Dante, looked to it, as the leader side by side with the Papacy, of an enlightened and free Christendom. The Holy Roman Empire was the centre of international law and international comity in the Middle Ages. The history of the Holy Roman Empire reveals the lines on which the international organization of the world should proceed. And the League of Nations will prosper if it works according to the methods bequeathed to the world by that unique institution built up by the political genius of the Middle Ages.

With the breakdown of mediaeval unity which, as Frantz points out, was not altogether the work of the Reformation, but was caused by the breakdown of the Holy Roman Empire and the collapse of the moral prestige of the Papacy symbolized in the humiliation of Anagni inflicted by the Roman legist Nogaret and the other agents of the absolutist Philip the Fair of France, the problems and difficulties of international intercourse began. The defeat of the Holy Roman Empire and of the Papacy, together with the insurgence of the individual State, created the modern problems of international intercourse. A new spirit came to dominate international relationship. Machiavelli displaced Dante. The new expansive activities of European States created still other problems and difficulties. The maritime discoveries led to the exploitation of new countries and savage or semi-savage tribes, the establishment of European colonies brought wealth as a factor to be reckoned with in international politics. Increase of wealth was put forward as the ideal of the activities of States. Mercantilism was materialism converted into a policy. The contact of Europeans with other peoples of the world in Asia, Africa, with savage and semi-civilized tribes raised another crop of international problems.

#### TWO WAYS OF SOLVING INTERNATIONAL PROBLEMS

All these problems of modern international intercourse can be

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solved in one of two ways. There is what may be called the Roman way advocated, curiously enough, by men so wide apart in training and culture as Bluntschli and H. G. Wells. This way is the way of law and of administration and consists in the extension of the State idea into the government of international relations. They aim at the creation of a world-State, enjoining law and order in the world in the manner of an ordinary State. We have called it the Roman way because the Roman empire was one such world-State. It kept international law and order by suppressing the individuality of the subjects of international law, namely, peoples and States. The fate of the Roman Empire proves the worthlessness of this method of organizing international government.

### THE ROMAN WAY

Apart from the lesson of the breakdown of the Roman empire, it is doubtful whether the peace of the world would be worth having at the price of the extinction of the individuality of the peoples and States that exist. The individuality of the individual controlled by the government of the State is not a relevant argument as advocates of the world-State would argue. They say that the personality of the individual is not absorbed in the personality of the State; so there need be no fear that the personality of the States would be extinguished in the common life of the world-State. The answer to this argument is that only by a thoroughgoing extinction of the individual States could the world-State hope to exist. Each of the greater States or a combination of several of the smaller States would be so formidable a factor that no world-State could dare to exist in the shadow of a challenge to its authority delivered by such powerful forces. The danger to the State from the individuality of the individual is not so great that individual freedom and personality are not possible without detriment to the State. But the larger the parts of an organism the greater the centralization and subordination of the parts to the whole. A unified world-State cannot leave to the component States the freedom

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and autonomy that are given to the individuals that compose the ordinary State. It could not even allow to the separate States that freedom and autonomy that are given in an ordinary federal State like the U.S.A. to the component States, and we know how near to destruction was the federal government when the challenge to its authority was thrown out in the Civil War. The States that are members of a world-State must necessarily lose a very large portion of their personality unless of course the world-State is to be a State only in name. The Roman idea of organizing international relationships by means of law and government is as futile as it is dangerous to all that we associate with the life of free States.

### THE MEDIAEVAL WAY

There is another way of governing international relationships which one may call the mediaeval way, suggested by the example of the Holy Roman Empire. It is by setting up an institution that will exercise influence freely over the minds of peoples, because it is endowed with compelling moral force. It is by the education of rulers and peoples in the ideals of peace that the government of international relations can be put on a secure basis. The establishment of an institution vague in its organization and powers but as definite and comprehensive in its influence as the Holy Roman Empire would be fraught with special difficulties at the present day. For there is neither the moral, nor the religious, nor the cultural unity that is the necessary atmosphere for the exercise of such influence. The difficulties that strew the path of the League of Nations prove the special difficulties of the modern States. But the League of Nations is built on the right lines, and it will succeed only to the extent to which it is able to persuade and argue peoples and States into an attitude of peace towards each other. It will fail to achieve its objects if it tries to act as a super-State delivering judgments unasked and trying to enforce this decision without the support of the *communis sensus* of the community of States. It must act as a moral and social

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force and influence and never as a juridical institution. It must arbitrate, not judge. The application of the idea of the State to the League of Nations would be utterly fatal to the fond hopes that cluster around it.

### THE COMMUNITY OF STATES AND THE MAKING OF INDIVIDUAL STATES

International relationships are important not only because they have to do with the relations of States to each other but because they have much to do with the internal life and progress of States. If to make the community of States, the birth of individual States is necessary, it is also true that the community of States is necessary for the making of individual States. No State has been made by itself or by its own people. History is full of examples of the manner in which and the extent to which the life and development of States owe to the help given by other States and other peoples. Apart from the fact that all the States of history have been made not by aborigines but by foreigners, many a modern State made by a people rising to the call of unity and freedom owes its birth to the help of other States. The United States of America were formed with the active aid of France. Canning called the new world of South America to balance the old world of Europe. The independence of the South American States is guaranteed by the Monroe Doctrine of the U.S.A., Serbia and Bulgaria, Rumania and Greece, owed their independence to Russia and the sympathy of European States and peoples. Thanks to the intervention of the U.S.A. the armies of Napoleon III had to evacuate Mexico in 1863, and Cuba owed her independence to the free will of the U.S.A. But for the help of Napoleon III Italy would not have achieved her unity as Cavour himself, the maker of that unity, acknowledged. Although the national saying *Italia fara da se* did nerve the energies of a resurgent people, Pope Julius II's ancient prophecy, *Italia extero liberanda*, was proved true almost to the very letter. The new States of Poland, Czecho-



slovakia, Yugoslavia, would never have been regenerated but for the sympathy and support of the allies in the Great War. It is true, States must help themselves, but no modern State can make itself, and alone. The influence of international law upon the development of municipal law is one of the proved theses of modern learning. Ihering has shown how the commercium of the ancient Romans was first recognized as a regulator of international intercourse before it was accepted in the private law of Rome.<sup>1</sup>

## RELATIONS BETWEEN INTERNAL AND FOREIGN POLICY

Not only the making of States but the policy of made up States is often determined by its relations with other States. The solidarity and community of States are proved by this fact also, that the domestic history of States is affected by its foreign relations. It is only for purposes of convenience and as a result of division of labour that the conduct of foreign policy is kept apart from the administration of Home affairs. But foreign affairs and domestic affairs are linked together. A war affects the internal economy of a State and the decision of a foreign Minister may also affect the policy and acts of the Finance minister or the Ministry of the Interior. In most modern States more than half the expenditure of the State is devoted to the maintenance of those institutions that are necessary for the conduct and advance of its foreign policy. The public debt and the system of taxation of a country may be built up by a war. Who does not know, says Frantz, that the whole of modern constitutionalism has been created by the financial necessity of meeting deficits in national budgets due largely to the expensive foreign policy of modern States? The period of the Holy Alliance in the early nineteenth century illustrates the havoc which the foreign allies of a State may inflict upon its political liberties. Did not the legitimist policy of the Holy Alliance force political reform to lag behind in Prussia and Austria and France?

<sup>1</sup> *Geist des Römischen Rechts*, Vol. I, Sect. 19.

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### STATES MEMBERS OF EACH OTHER

History has so linked States together that no State can consider itself self-sufficient. No State in the world is made or developed by itself. As man is man only among men, so is a State a State only in a community of States. It is the community of States that is a source of life to individual States. The progress of the world, therefore, is a duty common to all States. No State can refuse to concern itself with the affairs and anxieties of other States. The fellowship of States requires that they must take an interest, not necessarily a prying interest, in the affairs of one another. Especially peoples struggling towards progress and freedom like the people of India, cannot hope to succeed without the goodwill and co-operation of other States. It would be as peevish and foolish of India to refuse help and co-operation from the people to which it has been linked by fate as it would be churlish of England to refuse that help. Not only by way of help but by way of warning and advice, States have to concern themselves with each other's welfare. "Mind your own business" as a principle of foreign policy is the height of folly amounting to a crime, nay even to a blunder. If England had warned and advised Prussia to stay her hand as she was about to commit that outrage on Denmark in 1860, and the later outrage on Belgium in 1914, all the later development of Prussian policy might have been modified, if not prevented. The world is suffering to-day for the timidity and impolicy of peoples and statesmen who refuse to accept the solidarity and the community of States as a guiding principle of foreign policy. If we are to learn any lessons from history it is that we deny the community of States only at our peril. States which refuse to recognize the community of States are only digging their own graves. For States are made by the community of States as much as by themselves.

## XII

### THE FALL AND RECOVERY OF STATES

G | "A State without the means of some change is without the means of its conservation."—BURKE.

#### DISEASE AND DECAY OF STATES COMMON

"As are the leaves of trees, so are the generations of men," sang Homer<sup>1</sup> in one of the saddest passages of all literature. The decline and fall of States is one of the most frequent, as it is one of the most distressing phenomena of history. The political writers who assert the organic theory of States believe that this decline and death of States is inevitable. For just as organic bodies are born, flourish, and grow, and then wither and die, so, they say, must States. Men are mortal and so are States. The history of the State lends colour to this view. So many States have gone the way of all flesh—Sumer and Akkad, Egypt of the Pharaohs, Assyria, Peru, Mexico, Carthage, the city-states of Greece, the Roman empire, the kingdom of Poland, and the empire of the Hapsburgs. And even for those States that have not gone down, there have been periods of decline and disease. All States have at one time or another of their existence been overtaken by sickness. Their physical foundations have cracked or their moral fibre loosened or their nervous force diminished and their vitality undermined. Some have gone through periods of depression and have even trudged the path of decay. Others as a result of their weakness have lost their individuality and have been conquered and incorporated into the individuality of other States. They could not perform their primary duty of defence and safeguard to their peoples and have been compelled to yield the post of duty to others who could do what they could not. Still others, although sorely attacked by disease, have

<sup>1</sup> *Iliad*, Bk. VI. 146.

made an effort and recovered the lost position or at least stemmed the rot and decay that had set in. But sickness and disease seem to be the common lot of States, as of men. Even if we cannot accept the view that the death of States is inevitable, we cannot put away from us the fact that States in the course of history have been overtaken by disease and decay and that some of them have succumbed to death.

#### CAUSE OF DECAY

Certain political writers think that this disease and decay, if not ultimate death, are inevitable. States, like men, grow old, and old age loosens the foundations and fibres of the States. Whether the cause is old age or not the fact is that we often find in the history of States a time or times when the things that keep a State together lose their strength and grit. Social solidarity which is the life of States weakens, gives way, and is sometimes overwhelmed by anti-social forces. The vice of old age, says Vollgraff, is selfishness. The old man's hold on society is weak; he becomes self-centred, thinks only of his wants, his ailments and the duration of his life. Selfish, self-centred, self-engrossed individualism is the chief characteristic of diseased society. The acquisition of material wealth and well-being, a life of ease and pleasure and luxury, with little thought of the needs and welfare of society, are the aims of individuals in such a state. Montesquieu<sup>1</sup> has traced the influence of luxury on the fortunes of the emperors of China. No body of men can exist when its members tend to fall away from regard for it into love of their own selves and when the social instincts become overlaid and choked by egoistic individualism. For then the beginning of the end of society and States may be said to have come. The tyranny of a prince, says Montesquieu,<sup>2</sup> does not put a State so near to its ruin as indifference towards the public weal.

<sup>1</sup> Montesquieu, *L'Esprit des lois*, Liv. VII, ch. 6 and 7.

<sup>2</sup> Montesquieu, *Grandeur et décadence des Romains*, ch. IV.

## THE MAKING OF THE STATE

### SIGNS OF DECAY

This weakening of the social impulse finds expression in all departments of man's activities, in his private as well as in his public life. It attacks the family, society, government and the other institutions of the State. In family life, it asserts itself in the view that marriage is meant only for individual enjoyment and it is only a contract and not a sacrament, that it can be terminated when it no more serves the individual purpose of either party to the contract, that the right to divorce goes with the right to marry, and that children are a burden of whom the fewer the better. Selfishness displaces the human instinct of providing for children and one of the chief causes of modern pauperism is the thriftlessness of parents, who spend on luxuries what should have been saved for children. Modern laws which provide for compulsory and equal partition of property in favour of children are a protest against and a reflection on the selfishness of parents. The principle of the equal division of property among the children of a family decreed by the Civil Code of Napoleon was called for by the selfishness and love of pleasure and luxury of the bourgeois and aristocratic families of the *ancien régime*. In times of decay property becomes corrupted by the vice of individual selfishness. Childless men have no future to look forward to and are content with personal property and rented houses. In the times of Theodosius (fourth century A.D.), Rome is said<sup>1</sup> to have counted, besides 1,780 palaces for the upper ten, a number of about 46,602 *insulae*, or flats as we should call them now, rentable by the middle classes. Debts are freely incurred and property heavily mortgaged in such societies. Work is also degraded, for a life of selfish luxury calls for quick returns and acquisition of wealth by speculation. The love of luxury breeds lasting discontent among wage-earners just as at the other scale the desire of capitalists for illimitable profits. The matter of seditions, said Bacon, is of two kinds, much poverty

<sup>1</sup> Roscher, *Politik*.

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and much discontent, and the remedy he urged was that the treasure and monies in a state be not gathered into few hands, for otherwise a State may have a great stock and yet starve.

### SELFISHNESS THE SOCIAL DISEASE

The intercourse of social life is poisoned by the dominance of selfish individualism. Confidence in each other is replaced by mistrust. Men look upon each other as if the one expected the other to do him in the eye. They try to get the better of each other. Credit has to be protected by law, by hypothecs, mortgages and security. Actual necessity and mere material interests do bring men to one another, but they fly from one another as soon as these causes have ceased to operate. Personal advantage and profit is the only motive power of social intercourse in diseased societies. The citizens of such a State will lend money to its enemies, provided they get a high rate of interest from them.

*“Hinc usura vorax, avidumque in tempora fœnus  
Et concussa fides, et multis utile bellum.”*

The weakening of the social solidarity of a State is often betokened by sickly cosmopolitanism or social pantheism, as a French writer calls it, which treats the affairs of one's country as coldly as those of another.

### ORGANIZATION MECHANICAL RATHER THAN LIVING

When the life of all social and political organization, which is the social impulse, goes out of it, the organization becomes merely mechanical. It works like a machine and like all machines must depend on the will of some outside body. A State in decadence moves altogether at the behest of its government. All power is concentrated in the government, and the government is centralized. All life and activity have oozed out from its parts and its citizens move like mere automata. Political activity is centralized and self-government is at a low ebb. That which ruined the dynasties of Tsin and Soui, said a

Chinese authority quoted by Montesquieu,<sup>1</sup> is that instead of limiting themselves, as did the ancients, to a general inspection which only is worthy of a sovereign, these princes wished to govern altogether immediately by themselves. Royer Collard said of France after the Revolution: "Centralization in France is not a doctrine, but a necessity, as it is the only means of governing separate individuals moving on the same soil without any common moral bonds." A drab equality is the sign and consequence of this weakening of the principle of life. The hierarchy of social order has gone. This kind of equality kills liberty as the co-existence of universal suffrage with Bonapartism has proved in France. The administration of such States becomes rigid and stony and the judicial administration is distinguished by an over-complicated procedure. Law becomes multiform and multitudinous. As the Roman maxim has it: *pessima república, plurimae leges*. They are imposed artificially from above without proceeding from below, that is from the lives and needs of the people. The last days of a State generally witness the production of codes of law. "The idea of making a code," says Pastoret, "comes in the last stage of legislation." Laws have to take the place of morals, as the *Leges Pappia Poppaea* of Augustus and the device of the endowment of motherhood in modern times show. The multiplicity and complexity of laws mean only an increase in litigation and litigiousness. The saying of Plato: "the more the laws, the more the disputes and the worse the morals," comes true in such decadent societies.

## ADMINISTRATION IN DISORDER

The financial administration of such States becomes a burden to the people. Taxation is heavy and touches the foundations of life. "Les exactions violentes sont toujours instruments de rébellion," said Richelieu.<sup>2</sup> And according to Bacon<sup>3</sup> a people overlaid with taxes could never be valiant and martial. The

<sup>1</sup> *L'Esprit des lois*, Liv. VIII, ch. 6.

<sup>2</sup> *Maximes d'état*, etc., ed. Hanotaux.

<sup>3</sup> *Essay on the Greatness of Kingdoms and States*.



army is recruited from foreign mercenaries. The administration becomes bureaucratic and all-absorbing. All for the people and nothing through the people, becomes the maxim of the government of such a State. Self-seeking, and self-aggrandizement become the motives of the rulers. Bribery and corruption become common among public officers, tempered only by the fear of being found out. The despotism of Caesar and of Napoleon are to be explained by the greed and lust for office of the Optimates in the one case and of Jacobin leaders in the other. What the demagogue Hyleas said of the tyrant Euthedemus of Miletus in Asia Minor is the justification of despotism in decaying States. "Euthedemus," he said, "you are a necessary evil to the State. We can do neither with you nor without you." When the State cannot be held together by the hands of its own free citizens it must be held up by the hand of a single man, who holds it by means of a supreme authority. A decadent State is necessarily a servile State.

#### TWO KINDS OF DECADENCE

The signs and symptoms of the decaying State we see displaying themselves in the history of the spoiled States of the world. There are two kinds of political decadence with which the history of the world acquaints us. There is the State which falls down from its high estate and dies and disappears from history. There is another kind of State which stays where it once was jealously guarding the talents which God gave it but not making use of them so as to multiply them and perfect itself. When States refuse to move and perfect themselves they are liable to have even that which they have taken away from them. They may not be in decadence, but they are in danger of death at the hands of other States. When the principle of life which is activity and progress has departed from a State, it is in full decadence as much as if it were suffering from rottenness. To the latter kind of States belong China, Ancient India, Egypt and Peru and Mexico before they were conquered by more vigorous and more political peoples.

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### STATIONARY STATES—CHINA

China, which escaped foreign conquest so far as it kept foreign influence outside, owed its immobility to its family structure and its fear of intercourse with other peoples, its religion and politics being pure ethics. Its social organization was that of a family. The Chinese State was an extended family with the emperor as its patriarchal chief.<sup>1</sup> China proves the peril of building up a State as if it were a family. Filial love cannot hold the citizenship of a large State together. Institutions and institutional loyalty are necessary. A large State like China must have a complex organization and may not rest content with the simple constitution of the family. The history of China also proves that a State cannot be governed by morality alone. Morality is fundamental for a State but by itself it cannot solve the problems of the government of a large State. What is also wanted is social organization, government, international relationship, a progressive civilization, and culture and an inspiring religion. The isolation of China prevented it from receiving fruitful ideas and institutions from other peoples. The wall of separation of China between herself and the other civilizations of the world has immured China in the dark prison-house of immobility. Xenophobia which, according to M. de Morgan, was the principal cause of the duration and conservatism of its curious culture proved to be its protection only as long as it was kept away from contact with other peoples. But as soon as an alien civilization and culture forced its way into China, which had not been prepared for the reception of new ideas and which did not willingly and freely accept them as did Japan, it came to enter on a stage of full dissolution.

### INDIA; EGYPT

Ancient India owed its unprogressiveness to the rigid and strait philosophy and institutions of caste which split up India

<sup>1</sup> Cf. Montesquieu, *Liv. XIX*, ch. 20. "Cet empire est formé sur l'idée du gouvernement d'une famille."

into a number of rigid iron moulds, to the prohibition of foreign travel and of foreign intercourse. Egypt owed its immobility to the regular rise and fall of the Nile, Peru to its socialistic organization. In all of these stationary States, the cause of their immobility was the same as the cause of the decay of States, viz. imperfect solidarity. In China, the simplicity of the social organization, in India the rigidity of caste, in Egypt the gulf between the priests and the kings and the ruling classes on the one side and the peasantry and the slaves on the other, in Peru the State and society held together only by the government were the causes of the decay and fall of these States. The social solidarity that makes for unity and the resultant life of free activity were absent. Imperfect social solidarity is the cause of the immobility of certain States as of the decay of others.

#### DEAD STATES

It is among the other kind of States, in States that decayed and died, that the lack of social solidarity acts as a potent cause of the beginning of the end of their fall. Almost every one of the States that have decayed and died illustrate the potency of this cause. The ruin of the Greek city-states was brought about by their interminable factions. In Rome when the decline began in the second century B.C. the weakening of social solidarity was seen in the decay of family life, the laxity of the marriage bond, which laws vainly tried to control, the decline of filial obedience from the stringency of the ancient Roman discipline, the wild freedom of women which came to a head in the imperial epoch. It was seen also in the wide gulf that separated the optimates from the proletariat. Roman society ceased to be an organic and harmonious whole when the old interchangeable division into patricians and plebeians, which dates from the Licino-Sextian Rogations (377 B.C.), gave way to the impassable gulf between the haves and the have-nots of the later republic and the empire. The defence of the State came into the hands of mercenaries, not of citizens

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as before, interested in the preservation of the State because it was their own. The antithesis between provincials and citizens in Rome, between the rulers and the ruled, still further broke Roman society spiritually into fragments although Rome was physically held together by a centralized administration.

### BYZANTINISM

The Roman State would, in any case, have fallen to pieces if it had been left to itself, but it was not left to itself. At a time when the stays of society were so weak, it was subjected to a series of blows from outside to which it succumbed. The Roman empire when it was able to ward off and be free from the attacks of the barbarians, lingered on at Constantinople. But the Byzantine Empire, in spite of great rulers like Justinian, Leo the Isaurian, and Basil the Bulgar-slayer, in spite of its splendid army, its well-organized bureaucracy, could not stem the tide of decay. Its religion was not such a good cohesive organizer of society as the western form of Christianity. Its population was motley—composed of Slavs, Illyrians and Bulgars, not to speak of Asiatics and Africans. Its social solidarity did not proceed from within or from below, but was imposed from above by the governmental machine.

### STATES IN DECADENCE—SPAIN OF THE SEVENTEENTH AND EIGHTEENTH CENTURIES

The fortunes of the States of mediaeval and modern Europe still further illustrate the dependence of the life and progress of the State upon its social solidarity. In Spain the ideal of religious unity, burnt into the minds of Spaniards by seven centuries of crusades against the Moors, led to the abandonment of the country by Jews and Muslims, and left the Spaniard State composed only of the nobility and peasantry and the clergy and officials with no industrial and urban middle class to stand between them and link them together in a graded, and therefore strongly bound, social harmony. The Spanish ideal of war which made the soldier-class the most

important class in the State and the consequent depreciation of industry as being low and vile put spokes in the wheel of the social solidarity of Spain.

FRANCE OF THE *ANCIEN RÉGIME*

The France of the *ancien régime* was a house divided against itself. Its family life in the towns and among the upper classes had been corrupted by luxury, disorder and vice. The institution of the salon, kept in the seventeenth century within the bounds of discipline and culture and proceeding and founded upon the education of women and the family, in the eighteenth brought the manners of the clubs and public places into the precincts of the family to the weakening of the bonds of marriage, of filial obedience and paternal authority. French society was riddled by holes and fissures. The nobility of the country were ranged against the nobility of the court, the gentlemen of the robe, the lawyers, against both classes of nobility, the bourgeoisie, against the country people, the peasantry against the rest of the nation. Vice had poisoned the springs of social life. The age of Louis XIV and of Louis XV was the golden age of royal mistresses. Luxury spreads discontent and divides a people into two nations while necessities unite them. The social cohesion of France had been watered and was fast dissolving.

## SOCIAL DISLOYALTY

One frequent sign of the weakening of social solidarity is the disloyalty of classes and ranks of society to the ideals and customs of their order. "Un des maux de la France," confessed Richelieu,<sup>1</sup> "est que jamais personne n'est dans sa charge." Every class in French society was disloyal to its traditions and vocation on the eve of the Revolution. Many of the landlords were absentees wasting their time and substance in the pleasures of the capital. They who were the natural leaders of the country-folk left the latter leaderless and without direction. Many of

<sup>1</sup> *Maximes d'état*, etc., ed. Hanotaux.

the higher clergy were atheists and *bons vivants*. Louis XVI created a sensation when he refused to appoint some of them as bishops and archbishops. The bourgeoisie, the class that suffers the most from anarchy, dallied with the ideas of revolution. The peasantry, to whom administrative reforms *à la* Turgot were the greatest need, longed for political reform from which they were the last to benefit. The monarchy, which according to the theory of the enlightened despotism of the eighteenth century should have put itself at the head of the people and worked as the first servant of the State as did Frederick the Great in Prussia, looked to second-rate ministers to save the nation. The French monarchy in its last days proved the saying of Montesquieu,<sup>1</sup> "La corruption de chaque gouvernement commence toujours par celle des principes." Society in France was thoroughly disorganized. Its unity and its potency had been completely undermined. Only a new rearrangement of class and order and a new social fabric could restore the unity of society. And that was the work of the French Revolution.

## CONQUEST OR RECOVERY

One of two fates awaits those peoples that have become stagnant or are in decay. They are either able to recover themselves from the pass to which they have been reduced or they pass under the yoke of some other State. We shall speak of the latter of these experiences first. The State from which the principle of life has departed, which is no more able to serve its people, must give way to States that are more capable of doing this necessary service. Political nature abhors a vacuum. No land is the monopoly of a State and no people can for ever continue to be the victims of its government. If a government is not able to defend its people against external aggression and internal disorder, if it is not able to organize a unity and solidarity that will lead the people into the path of progress and liberty, it has failed in its duty and must surrender its trust

<sup>1</sup> *L'Esprit des lois*, Liv. VIII, ch. 1.

to other and more competent hands. That is required not only by the interests of individual States but by the progress of humanity and by the interests of international solidarity. The world is so linked together that disorder in one country or among one people is bound to have repercussions and reverberations in other countries and among other peoples. It is especially so now when the whole world has been bound together and its parts brought into intimate and continuous contact with each other by modern science and industry, but it was always true in regard to peoples and countries that were neighbours of each other.

### CONQUEST

Conquest is undoubtedly a harsh thing. The loss of freedom and independence by any people who once possessed these things must be painful to view and contemplate.

“Men are we, and must grieve when even the shade  
Of that which once was great has passed away.”

But conquest, like war, has played a beneficent rôle in history. Like slavery, it has saved some peoples from extinction and has incorporated others with more virile peoples and thus saved them for history. The Spanish conquest has crossed the blood of the American tribes with that of the European conquerors and thus produced a new and more progressive people than aboriginal America had ever known before. Most of the States of the world have been made by conquest. The conquering people bring to the conquered gifts of service of which the latter were in sore need. The organizing genius of the Normans made the unity of the English State. Charlemagne welded the German tribes into political unity just as centuries later the Napoleonic conquest of Germany showed the German people the way to unification. The conquests of Islam first awoke the tribes of Arab, Africa and Central Asia to political consciousness and planted them on the road to whatever civilization and progress they have been able to achieve.



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It was the Manchu conquest about A.D. 1650 that gave China lasting political unity. The unity of modern Italy and of Germany was as a matter of fact achieved as a result of a conquest, aided, no doubt, by a powerful popular movement. The unity of Spain was achieved as a result of a long series of conquests. The civilziation and culture and progress and unity and even liberty of many a State may be traced to conquest. As a means of political regeneration, conquest has been the saviour of many a people.

### THE ONLY JUSTIFICATION OF CONQUEST

And conquest might have done much more for progress and civilization if the conquerors had set before them consciously the task of educating and training the conquered people in the art of political organization and government. For the fact of conquest is certainly proof of the possession by the conquerors of superior political virtues. Not that the conquerors are in every respect superior to the people they conquer. Most conquered peoples are superior in culture, even in civilization, sometimes in both, to the conqueror. The Greeks conquered by the Romans, the Romanized Gauls and Iberians conquered by the German tribes, the Dravidians conquered by the Aryans of ancient India, the Hindus conquered by the Mussalmans were all superior in culture to their conquerors. Capacity for political organization does not always go with a high degree of civilization and culture. However that may be, conquest would have done more for the progress of the conquered if the conquerors had thrown off the spirit of conquest once the work of conquest had been achieved. The right of conquest, says Montesquieu,<sup>1</sup> is necessary, legitimate and unfortunate, and it can justify itself to human nature only by meeting the immense obligation which goes with it. But unfortunately the result of the conquest has not been the motive of the cause of conquest. Conquering peoples did not start on their career of conquest with the object of benefiting

<sup>1</sup> *L'Esprit des lois*, Bk. X, ch. 4.

the conquered. Hunger for land, the thirst for gold and silver, the gains of commerce, the pressure of population at home, or at the best a spirit of adventure, have been the usual cause and motive of the conquests of history. It was only in the result, generally unintended, that the conquered peoples have benefited.

#### CONQUEST A MEANS OF POLITICAL EDUCATION

How much greater the rate of progress of States which have risen from conquest would be in modern times if the conquering people looked upon the conquered as a people entrusted to them for education in the art of political organization and government! How much easier to-day, for instance, would be the problem of Indian government if the English immediately after the mutiny of 1857 had placed before themselves, consciously and of set purpose, the political education of the people of India. They should then, seventy years ago, have launched on the policy which they adopted only a few years ago of mass education, local self-government, indianization of the services, organization of the defence of the country on a national rather than a racial basis. Instead of that they have been obsessed by the tradition of their own history where every constitutional reform was granted only as the result of a great struggle and a popular agitation. Concession to popular agitation is the way of political progress among a people dispossessed or unenfranchised, but which is one with itself. With a conquered people such a policy is fraught with danger, as every reform is treated as an invasion of the vested rights of the conquerors and as a result of fear and panic. Unfortunately for the progress of India, the English had been filled till the other day with the memories of the Sepoy mutiny, oblivious of the fact that it was, after all, an infinitesimal proportion of the people that had been involved in the mutiny. If, immediately after the quelling of the rising of 1857, they had made a declaration like that of August 1917, that they were going to take up the business of the political education of the people and speed up

the establishment of national self-government, they would have been spared the political troubles of the last twenty-five years and the country would have been more ready and better equipped for self-government than it is to-day.

#### GOVERNMENT OF DEPENDENCIES OUGHT TO BE EDUCATIVE

The attitude of conquerors to the conquered in modern times should be educational rather than strategical. They should from the first give signs and proofs of a policy of so organizing the government of the country that as soon as possible it could be entrusted into the hands of the natives of the country. The English should have begun the indianization of the services at the top, in the manner of the American administrator, General Wood, who on the morrow of the conquest of Cuba surrounded himself with Cubans, had a Cuban as private secretary from whom no secrets were kept, and who did not disdain the services of the Cubans who were most hostile to America and to himself just because they happened to be the most competent. The English in India should have tried to bring the better mind of the subject peoples to admit the superiority of their social customs and institutions in the manner of General Wood, who abolished polygamy and slavery in the American possessions, instead of asserting a policy of non-intervention with native custom. They should from the beginning have organized the growth of representative institutions according to the spirit and the genius of the country instead of laying down, as did Lord Morley only twenty years ago, that parliamentary institutions could not be acclimatized in India. They should have done whatever was necessary for speeding up the progress of self-government in India in the spirit of the teacher who wants to teach his pupils to help themselves, and to make his help dispensable as soon as possible. They have unfortunately acted in the spirit of soldiers holding the citadels of privilege and power and doling out concessions grudgingly to agitation. It is to be hoped that at least in the future the authorities will look ahead if not like prophets, at

least some twenty or thirty years in advance and set on foot measures that may be necessary to realize the only possible ideal of a political people charged with the political education of another—namely, the realization of unity and liberty and good government in as short a time as possible. The political training of the people must be taken in hand and pursued with honesty and patience and persistence. Reforms in the direction of entrusting the people with the government of the country with a view to handing it over to them as soon as possible, long before agitation suggests them, should be the guiding principle of Indian administration. Until and unless the English shed their intense individualism and insularity, as acute foreigners have more than once observed, their government of alien peoples is bound to be a difficult and precarious business.

The government of one people by another is always a difficult business, especially when the governed have a culture and civilization of their own not inferior to those of the governors. But much of the difficulty would be reduced and much of the bitterness softened if the ruled recognized from the beginning that the rulers were determined to teach them as much as they knew of government and political organization. If every conqueror could take up the government of the conquered in the spirit of the new American rule of dependencies under the inspiration of a General Wood, much would be forgiven alien rulers. These latter should set about their business of ruling by teaching those that are *in statu pupillari* with all the singlemindedness and geniality and the respect towards the taught which distinguishes the good teacher. The art of government has much to learn from the art of the teacher.

#### THE TECHNIQUE OF THE TREATMENT OF BACKWARD PEOPLES

It is the art of the teacher that will help the European rulers of backward races in the business of governing their wards. Neither the methods of military discipline, nor the devices of bureaucratic administration, nor the give and take of commerce will help in the government of these peoples. As H. M.

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Stanley, who knew these peoples as few Europeans have known them, advised his subordinates, "it is not by acting as military dictators but as patriarchal rulers that trouble can be avoided in the government of such peoples." The teaching of responsibility, of self-respect, of self-government are the principles of the art of the government of backward races. To raise them in the scale of political progress ought to be the main and ultimate business of their rulers. This is not only good morals but good politics. For if the main point of the business of European colonization is the exploitation of the lands and resources of the backward races, more could be gained by friendly treatment and genial intercourse than by the flourishing of the big stick in the faces of these peoples. To convert the backward races into free peoples is the high calling of those entrusted with their government.

### RECOVERY—TWO METHODS

When life has not altogether gone out of a State, it is not impossible for it to recover from a condition of degeneracy. A State can do so in one of two ways, by reform or by revolution. The course of revolution is pointed out to those peoples whose State is so diseased and rotten that nothing short of such a resort to force will save them. Force is the instrument of revolution. "How can there be revolution without shooting?" exclaimed Lenin<sup>1</sup> to the pacifists by whom he was surrounded in the days of the October revolution. "Grab the bourgeoisie so that they burst in all their seams," was another piece of decisive advice that Lenin threw out to the populace. The so-called peaceful revolutions preserve their character for a very short space of time. The use of force as a means of escape from a state of degradation or degeneracy is not forbidden to any people. For law and order are a means to life, not an end in themselves. And when these do not subserve their purpose they must be overturned. "A positively vicious and abusive government," counselled Burke, "ought to be changed if necessary

<sup>1</sup> Quoted in *Lenin*, by Trotsky.

by violence.”<sup>1</sup> But public order is not a thing that can be raised in a day as centuries have gone to the making of it. It may take years again to rebuild it:

“A thousand years scarce serve to form a State,  
An hour may lay it in the dust.”

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#### REVOLUTION—WHEN NECESSARY

A wise people will resort to revolution only when all other ways of reforming the State have been tried and failed. Force which disturbs the normal state of social life must be used only in the last instance, and under grave provocation. Revolution is justifiable only if it is used in the last resort and when all other ways of escape have been closed and “when the prospect of the future is as bad as the experience of the past.” And it may be resorted to only for the cure of chronic disease. “When the question is concerning the more or less perfection in the organization of a government,” said Burke, “the allowance to means is not of so much latitude.” And it must be launched, not when there is a mere chance, but a certainty, an absolute certainty of success. For the failure of revolution will only rivet the chains of tyranny ten times stronger or drive the people deeper into the morass of despair from which they tried to escape. “It is a great wrong,” said Napoleon, with regard to forcible methods of ending political trouble, “to fail in one’s plans. Only success can be right,” and this maxim is applicable especially to revolution. Unsuccessful revolution leads to terrible reactions as the history of Polish risings in the nineteenth century shows. No people can afford to play at revolution. “This distemper of remedy grown habitual,” said Burke, “relaxes and wears out, by a vulgar and prostituted use, the springs of that spirit which is to be exerted on great occasions.” Gandhi, proclaiming civil disobedience once a year, is hardly serving the cause of the revolution he has at heart.

<sup>1</sup> Letter to a French Nobleman, 1789.

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### REVOLUTION—WHEN SUCCESSFUL

To succeed, revolutions must be organized, and the stronger the organization of the powers in possession the greater must be the organization of the revolutionary movement. It must be popular in the sense that it is desired by the people as a whole, not that the people must rise *en masse* in revolt. Revolutions are generally organized by a minority. When Lenin made his audacious declaration at the first Congress of Soviets in June 1917, "Our party is ready to take over the power altogether now," and recommended that the assumption of power by the people should begin with the imprisonment of fifty of the richest capitalists in Russia, he was applauded only by a minority of the audience and laughed at by the rest.<sup>1</sup> Burke's observation has been proved by the history of ancient and modern revolution, "that a smaller number—more expedite, awakened, active, vigorous and courageous, who make amends for what they want in weight by their superabundance of velocity, will create an acting power of the greatest possible strength, while the greater number is generally composed of men of sluggish tempers, slow to act and unwilling to attempt, and by being in possession are so disposed to peace that they are unwilling to take early and vigorous measures for their defence and they are almost caught unprepared."<sup>2</sup> If the revolutionaries do nothing to irritate the people irrelevantly, as did the leaders of the French Revolution with their civil constitution of the clergy, they are followed by the people. But if the popular desire for change and acquiescence in change did not exist, revolutions would certainly be succeeded by reaction.

### REVOLUTION AND NATIONAL INDEPENDENCE

It is not only to the people of independent but decadent States that the way of revolution is open. Unfree peoples groaning under the yoke of tyrannical conquerors may also make use of it. To them the principles and laws of revolution

<sup>1</sup> *Lenin*, by Trotsky.

<sup>2</sup> Speech on the Unitarians, 1792.



apply with still greater force. For the reaction that follows an unsuccessful rising of an alien conquered people is bound to be more terrible than that which happens to a people who are one with the tyrannical rulers in nationality and civilization. To justify revolution the fruits of victory must be more precious than the benefits they enjoy under the conquerors. The tyranny that must be got rid of must be greater than the tyranny from which their subjection to an alien rule had come as a relief. Revolution must be a step forward in the march towards unity, liberty and progress. Freedom and independence are good things but they have got to be retained, and not to be lost as soon as they are easily got. Self-determination is, no doubt, a principle of liberty, but there must be a self to determine. A people which does not possess national unity, which has no common will of its own, which is divided into hostile and irreconcilable units cannot apply the principle of self-determination to itself. Every people must save its soul but it must have a soul of its own.

#### RESULTS OF REVOLUTION

Revolution, like all forcible remedies, creates as many problems as it solves. It gets rid of all the difficulties it is expected to extinguish, but it gives rise to others of its own making. First among these others is the spirit of revolution. A successful revolution not only breeds revolutions elsewhere but presents revolution as an ordinary method of political progress. "Every violent change presents the possibility of making another," said Machiavelli. To Mr. Gandhi and his followers offering resistance to laws in India, as if each law stood by itself, might be commended the saying of Thomas Paine, as good a revolutionary as they: "It is better to obey a bad law, making use, at the same time, of every argument to show its errors and procure its repeal, than forcibly to violate it, because the precedent of breaking a bad law might weaken the force and lead to the discretionary violation of those which are good."

The French Revolution not only bred a crop of revolutions

in Europe, America and the rest of the world, but bequeathed to the world the perilous idea that revolution can be resorted to as a relief from ordinary evils. It breeds a spirit of restlessness and discontent, not only with intolerable evils, but with imperfections. This is probably the meaning of Pascal's<sup>1</sup> paradox: "Tout ce qui se perfectionne par progrès p rit aussi par progr s." One revolution expects to be supplemented by another. In Spain rebellion has been the instrument of popular opposition to the government. When its modern history began, Ferdinand the Catholic complained to Guicciardini of "his disorderly country, where the soldiers are better than the commanders and where one loves more to fight than to command or rule." The constitutions that France got out of the Revolution came tumbling one upon the other. The Rousseauistic idea that the State is a thing made by men's hands who can shape it and reform it to their heart's desire is indeed the gospel of revolution.

#### OTHER DEFECTS OF REVOLUTION

The second great defect of revolution is that it often disturbs social solidarity by reducing society into a liquid or gaseous condition. It breaks up the proper integration of society. What Sir William Bragg<sup>2</sup> says of atoms in gaseous bodies is true of individuals and groups in societies that have been dissolved by revolution. "Occasionally," he says, "atoms must meet and so to speak each holds out vain hands to the other, but the pace is too great and in a moment they are far away from each other."

Nor is revolution so thorough as people think it is. Its dramatic suddenness and sensational course lead men to expect and celebrate greater and deeper results than do as a matter of fact accrue from it. Because it makes a great noise, involves large numbers of people, overturns a number of institutions and kills off its opponents, it is supposed to have

<sup>1</sup> *Thoughts*, Art. XXIV, 96 (*bis*), Havel's edition.

<sup>2</sup> *Concerning the Nature of Things*.

created fundamental changes. But the results of revolution are more spectacular than real, dramatic rather than deep, and produce difference of form rather than of kind. The French Revolution, as De Tocqueville has taught us to believe, did not change the fundamental character of French government, which has ever been centralized, and of French society, the principle of which is equality rather than liberty. "Civil revolutions," says Quinet,<sup>1</sup> "even the most radical, have nothing in common with liberty; the first does not necessarily lead to the latter." Even the social effects of the French Revolution were not so radical as they are commonly believed to be. Peasant proprietorship, which is attributed to the laws of the Revolution and to Napoleon's Code Civil already existed in France. According to Necker one-third of the land of France belonged to peasant proprietors on the eve of the French Revolution. The constitution of society in the United States of America was not changed but only developed by the American Revolution. The king of England was thrown overboard, but English common law, the principle and institutions of the rule of law, the separation of powers, the ideas and institutions of local self-government and the philosophy of individualism still remained. The Russian Revolution has replaced the despotism of the Tzars by the dictatorship of the proletariat but the bureaucratic administration, the espionage and the persecution of opposition are still characteristic of Russian government.

The fact of the matter is that revolution, just on account of its dramatic suddenness and unnatural rapidity, affects only the superficial evils of society. It gets rid of a tyrant, monarch or clique, changes the form of the constitution or transfers the source of power. "There is no revolution," says Mussolini,<sup>2</sup> "that can change the character of man." Only those revolutions are permanently successful that, as Quinet<sup>3</sup> insists, change the religion and the laws of property of the people.

<sup>1</sup> *La révolution française*, Vol. I, Liv. IV. 2.

<sup>2</sup> *Autobiography* (authorized English translation).

<sup>3</sup> *La révolution française*, Vol. I, Bk. V, and Vol. II, Liv. V.

It is this truth, probably, that the leaders of the Russian Revolution are trying to prove when they want to abolish Christianity in Russia, and individual property. It remains to be seen whether they will be more successful in their religious war than in the economic attack that has so far failed against the peasant proprietors of Russia.

There is another defect of revolution which explains the failures of so many revolutions to achieve lasting results. The very success of revolution produces a lassitude from which every people that has indulged in it has suffered. People soon get tired of the fever, the bloodshed, the restlessness, of revolution. It is this lassitude which comes as a reaction from revolution that explains the Bonapartist régime in France and the Soviet and Fascist dictatorships of to-day. A Revolution has often been followed by a Restoration. "Kings will be tyrants from policy," said Burke, "when subjects are rebels from principle." It is not to be denied that lasting and fundamental effects do flow from revolution, but they are the work of time. It is certain that the salutary effects of revolution can be secured in the course of time, provided there is the requisite wisdom among the rulers and the necessary patience among the ruled.

#### REFORM

Reform is Nature's way of progress. Rarely is much achieved by Nature *per saltum*. Nature does not normally change the face of the world by earthquakes or subsidences, although it does resort to these modes on occasion. Time is of the essence of natural progress. The seed dropped into the ground takes time to gather strength, to break through the crust of the earth as a seedling and then grow inch by inch till it assumes the proportions of the great oak or teak. Reform is the normal way of social progress, for it is the only peaceful way. It gives time for development, for adjustment to change of environment. "Temperate reform is permanent, it is a principle of growth," said Burke. It is called for by the needs and circumstances of the time and therefore is closely related to life. But patience

is a rare political virtue, especially among peoples who had marked time for long. Montesquieu's<sup>1</sup> saying, however, is true. "La politique est une lime sourde qui use et parvient lentement à sa fin." Progress obtained through reform is bottomed on reality and will therefore endure, while progress obtained through revolution is a sickly growth, bred in the hot-house of excitement and fed by the artificial light of emotion. Reform is the healthier and more regular way of national progress. It is better because it advances the country as a whole. Reform is possible where political life and activity are evenly distributed over the country as it has always been in England. One of the causes, according to Montesquieu,<sup>2</sup> of the decadence of Rome was the absence of any limitation to the number of citizens who were members of its assemblies. Revolution proceeds from the cities and overflows into the countryside. Quinet attributes the bloodiness of the French Revolution to the listlessness and the backwardness of the provinces and political progress had to be registered by shocks administered by Paris to the provinces.<sup>3</sup> The Russian Revolution was born in Petersburg and Moscow and dominated the country from those two cities.

## REFORM EASY TO ADVISE, DIFFICULT TO GET

Although reform is a better way of progress than revolution, how few peoples have followed it! Few rulers of States have had the wisdom or foresight or the courage to take up reform so as to ward off revolution. "Nothing," said Machiavelli,<sup>4</sup> "is more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to introduce a new order of things." As early as 1697 Boisguillebert had uttered probably the first cry of alarm in regard to the government of the *ancien régime* in France. Vauban, in his famous work on Dîmes, had depicted in authoritative words the misery of the common people. But the advice of Richelieu, who knew the true state

<sup>1</sup> *L'Esprit des lois*, Bk. XIV, ch. 13.

<sup>2</sup> *Ibid.*, Bk. II, ch. 2.

<sup>3</sup> Quinet, *La révolution française*.

<sup>4</sup> Machiavelli, *The Prince*, ch. 6 (Everyman's Library ed.).

of the kingdom and who thought it was better to let these abuses grow old than to correct them and put the machine of government out of gear, was followed to the letter. Now we see that the evils of the Bolshevik revolution could have been avoided if Tzar Nicholas and the ruling classes had showed some wisdom and courage and just a little foresight. The Reformation might have been avoided if the rulers of the Church had not committed a few easily avoidable blunders, and effected a few necessary reforms. The partitions of Poland might not have been if the *liberum veto* and the other "infernal liberties" of Poland had not brought the country to the last state of anarchy. "Early activity," observed Burke, "may prevent late and fruitless violence, for early reformations are amicable arrangements with a friend in power, late reformations are terms imposed upon a conquered enemy; early reformations are made in cold blood, late reformations are made under a state of inflammation."<sup>1</sup> It would be hard to find wiser advice than that given by the historical economist, Roscher, to statesmen confronted by political agitation. "Grant concessions," he pleaded, "beforehand which go far enough; once that is done guard the limits with iron strength. Should it be doubtful when to stop at concessions it is better to give too much rather than too little, just as a surgeon cuts off too much rather than too little from a decaying limb; a concession which does not go far enough can be of no use except perhaps to make the enemy of reform bolder." The surest way to prevent the spread of the revolutionary spirit, said Stein, the Prussian statesman, "is to meet all reasonable demands of the people." It is easy to be wise after the event, but it would seem that it is just as easy to be unwise before the event. Whom the gods wish to perish, they first make unwise.

## RECOVERY POSSIBLE BUT NOT INEVITABLE

To all peoples of the earth recovery from degeneracy or stagnation is possible, but not to all does it come. It depends

<sup>1</sup> Burke, Speech on Economical Reform.

## THE FALL AND RECOVERY OF STATES

on their will power, on their zest for progress, on their philosophy of life. Some peoples have believed that recovery was not worth while, that rest was better than activity, that a defect of life was more pleasant than an overflow of it. Others have lost all physical and moral capacity for recovery.

*"Sed revocare gradum, superasque evadere ad auras  
Hoc opus, hic labor est."*

But to those who have the will to recover, there is a way. The way may be long and difficult, but it is there. And those who will the end must also will the means. It is the solecism of power, said Bacon, "to think to command the end and yet not to endure the means." First of all they must will strongly to recover. If the will to recover is not forthcoming, limbs will not move and organs will not function. Consequently they must do all that may be necessary to help themselves to recover. Neither popular ideas nor philosophical beliefs, nor time-honoured traditions and customs and institutions should they cherish, if these are proved to stand in the way of recovery.

### THE WAY TO RECOVERY

The sovereign means of recovery, however, is to strengthen that social solidarity, the weakening of which, we have seen, is the main cause of the decay of States. Public spirit is the cement of States. Montesquieu endorses Cicero's opinion that it was the laws which rendered voting secret in the last days of the Roman republic that led to its ruin. Selfish individualism is the great enemy. This must be conquered by the effort of the individual, by education in the school and in society. Religion in all its forms wages an unceasing war against individualistic egoism and must be pressed into the service of sickly States. Most social and political reform has been preceded by religious reformation or revival. Institutions must be created in numbers to take the individual out of himself and teach him that he does not belong to himself so much as to his fellows. But the individual in his efforts to rise above



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egoism may fall into the clutches of group or communal loyalty. The clan and the group have played a useful part in the social education of the individual, but they are only an introduction to the larger life of the State. They must raise and train the individual out of his egoism into loyalty to and service of country and the State. The group or communal feeling must lead the individual trained in social solidarity to the service of the State and not keep it fettered to petty loyalties. The education and training of the character of the individual out of a selfish egoism which is the source of all the luxury and vice and flabbiness and disorder of decadent States is the supreme remedy for the evils from which such States suffer.

### VIGILANCE NECESSARY FOR RECOVERY

The recovery from decadence, although almost always possible, becomes difficult when the decadence is far gone. In a large complexly organized State, the beginnings of decay ought to be the signal for the organization of recovery. The incipient manifestations of decay must be watched and stemmed. The great benefactor of society is he who senses danger from afar.

*Felix, qui potuit, mundi nutante ruina,  
Quo jacet, jam scire loco!*

The State of civilization is never secure. Although civilization is far removed from savagery yet it ever stands on the edge of its doom. It does not take long for civilized man to lapse back into barbarism. The history of the Dark Ages of Europe, the fate of the extensions of Paraguay, the rebarbarization of the Dravidian tribes in India elbowed into the forests by the Aryan conquest, are there to prove it. "Early and provident fear," was Burke's solemn warning, "is the mother of safety."

## XIII

### THE MAKING OF INDIA

“Quand l’Inde commença à se replier sur elle-même elle perdit sa vitalité, s’alanguit, s’épuisa; quand l’Inde fut asservie par des étrangers hostiles il périt.”—SYLVAIN LEVI.

#### INDIA MADE FOR UNITY

If ever there was a country that was made for unity, it was India. Cut off from the rest of the world on the north by the wide region and high ranges of the Himalayas, and on the north-west by a chain of mountain walls, less lofty, but as impassable, except at a few places, on the north-east by a tangle of jungle-covered hills, and on the rest of the west and east by seas each of them with a temper of its own, India was defined and divided from others as few countries on the earth have been. Nor has Nature, that has divided India from the rest of the world with such decision, divided the country up within itself. No great mountain ranges cut it up into different and separate parts. The Vindhya and the Satpura ranges, which cut through India east and west in the middle, have never acted as an impassable internal barrier and have only served as a line of division and not of separation between the two parts of the country. They form a kind of girdle between the north and the south of the country. Although they have acted as a barrier to intercourse between the north and the south in the ancient past and allowed Aryan colonization to trickle down to the south only through the gaps of the Eastern and Western Ghats, yet they are not impassable. The other mountain ranges inside India prove even less to be walls of separation. The Aravalli range only serves as a relief to the monotony of the plains of Hindustan. The other minor ranges scattered about the plains add to the natural beauty of the country and never could by themselves be obstacles to intercourse between the peoples of its different parts. The Western and, to a smaller extent, the Eastern

Ghats have acted only as a second line of defence to the sea against the outside world. The rivers are all means of intercourse between the various parts of the country. Two of them, the Indus and the Brahmaputra, serve to strengthen the defences thrown up for the country by her mountain frontiers. The rest are waterways full of water after the rains and fordable across their beds in the rest of the year. The only barrier to internal intercourse from which India has suffered are the huge forest clots that are strewn about the country, the most important of them being the Gondwana forest in the heart of India. But forests have in no country acted as impassable barriers. They have everywhere readily yielded to the movements of man.

#### INDIAN GEOGRAPHY CALLS FOR UNITY

The natural features of the country, while they separate India from the rest of the world, call for unity within itself. Northern India, between the Himalayas and the Vindhya and from Attock to Calcutta, forms a vast plain, offering neither let nor hindrance, but an open invitation to the conquering march of foreign invaders, as to the uniting grasp of native builders of empire. The southern part of the peninsula, although a little more relieved from monotony than the plains of the north, presents no serious obstacles to the free coming and going of imperial hosts. The barriers of the Vindhya show no great opposition to the union of the north with the south, for the north could still come into the south, as did the Aryans through the gaps of the Eastern and Western Ghats, larger in the east than on the west. The Dekhan plateau has ever been the seat of established polities.

Its climate serves to give India a distinct individuality. Its rain is borne to it by the monsoon winds; its seasons on the plains, which form the greater part of India, hot, rainy and cold, prevail throughout the length and breadth of the country, only the degree of heat and cold and the amount of rainfall varying from part to part. India possesses what may be called a

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national flora and fauna. The trees and flowers of the plains, the peepal, the mango and the neem, the champak and the jasmine, are familiar to and easily recognizable by pilgrims from the north going to the south or from the south going to the north. Nature has stamped India with a distinct impress of its own. It has endowed India with all the facilities that could enable her to realize her oneness. It is one of the saddest ironies of history that this country that was destined by nature to be one and undivided has throughout history refused to become what nature had intended it to be. The history of India is a continuous and complete denial of its geography.

### ANCIENT AND HINDU INDIA UP TO A.D. 1000

The history of India for most Europeans and Northern Indians commences with the Aryans. It is with them that for these people the history of Indian civilization, culture and polity begins. The history of India before the Aryan invasions, somewhere in the third or second millennium B.C., was a blank, the night of pre-history. But recent historical research has proved that before the Aryans came to India there was a large stratum of civilization and culture upon which the Aryans overlaid their own. This pre-Aryan civilization and culture has been conveniently called Dravidian. We need not concern ourselves here with the question who the Dravidians were and whether they were autochthonous or imposed themselves from outside on an earlier layer of people. According to De Morgan,<sup>1</sup> India, when it issued from the quaternary epoch, was peopled by Negrito races who were subjected to a succession of invasions by Melanesians coming by sea, by some people of Tibetan stock descending from the Himalayas, and finally by the Aryans. Whatever their origin might have been, they were the people, according to the present state of our knowledge,<sup>2</sup> who first played a part on the stage of Indian history and to whom the

<sup>1</sup> *Les premières civilisations*, p. 18, footnote (1).

<sup>2</sup> See Grierson, *Linguistic Survey of India*, Vol. I, Introductory, p. 8.

name of Dravidians has been compendiously given by modern scholars.<sup>1</sup>

#### DRAVIDIANS, THE FIRST PEOPLES

Not only the literature of the Aryans but the race-memories and traditions of the Dravidian peoples of to-day proclaim that they were the disinherited peoples of India. To this day the Rajput chiefs of Marwar, on the day of their coronation, get their foreheads marked with the *tilak* made of the blood taken from the toe of a Bhil; a Mina does a similar thing for the Rana of Jaipur. At a festival of Siva at Tiruvalur in the Tanjore district of the Madras Presidency, the headman of the Paraiyans (Pariahs) is mounted on the elephant with the god and carries the *chauri*. In the State of Keonghar in Orissa, the crowning ceremony of the ruling chief has to be performed by Bheriyas. The names and titles of some of the "depressed" and backward classes contain the history of their ancient greatness and subsequent fall. The Pallis of the Tamil country "were once a dominant tribe under the Pallava dynasty, but were reduced to practical servitude when the Vellalans entered their country."<sup>2</sup> The Pulayans, who have given an alternative name of their own to the Nair Rajahs of their country, "have a tradition of better, even dominant days before the Nair enslaved them on their estates."<sup>3</sup> The Komatis and Balijas of Madras have to present betel leaf and nut to certain leather workers who worship the same common deity. The "depressed classes" of to-day may, with some satisfaction and perhaps consolation, see in the freedom of some celebrated and exclusive temples conferred on them, and which they may still enjoy on certain days of the year, evidence of the fact that they were once the rulers of Brahman and Vellala. More of such instances can be adduced, and they all go to show that the Dravidians were once the lords

<sup>1</sup> Nor are we concerned with the meaning of the word "Dravida." It might have been a corruption of the word "Tamil," or might have been derived from some word meaning the south. For us, the term stands as a kind of shorthand description of the numerous peoples and tribes that confronted the Aryans when they made their entry into Indian history.

<sup>2</sup> Baines, *Ethnography of Castes and Tribes*.

<sup>3</sup> Ibid.

of the earth all over India and that it was the spirit of revenge or of fear which always marks the second-rate conqueror that governed the policy of contempt and hate their Aryan conquerors showed towards them.

It is with the Dravidians, then, that Indian history begins. The Aryans, whether they came from outside India or from the Himalayan regions, as recent Indian scholarship is contending to prove, took India from Dravidian peoples who were settled all over the country from the north to the south, from the ancestors of the Brahui-speaking peoples of Baluchistan through the Santalis in the centre to the Tamils and Andhras of the south. And these Dravidian peoples had attained a fairly high degree of civilization and culture. The Aryans themselves took care to leave behind them tell-tale evidence of the condition of the people whom they dispossessed. The Vedic hymns, of the Rig-Veda especially, are full of references to the lives of the peoples whom the Aryans displaced. From these references, scanty and casual though they may be, we may make up a picture of what those peoples were. These references must be treated critically, for they are the evidence of hostile witnesses and must be put into the same category as the fabled history of the lion written by man.<sup>1</sup> They were comparatively dark-skinned, like the native peoples of the south and the aboriginal tribes that still people parts of Central India.<sup>2</sup> But they had attained a certain degree of civilization and culture, which was certainly higher than that attained by their nomadic conquerors. The hundred castles of Sambara, the "magnificent cities" of the Gandharvas, the "wealth of Anas," the riches of the Vritras slain by Indra were signs of a civilization which the Aryans coveted but could not claim. Sanskrit writings of the earliest times attribute even luxury and superior architectural

<sup>1</sup> It would serve the ends of historical research if the Aryan source books were studied from the Dravidian standpoint. If the Ramayana, for instance, were dealt with in this manner it would, one fancies, yield notable results.

<sup>2</sup> Although, according to Grierson (*Linguistic Survey of India*), there may be no linguistic connection between the Munda peoples of the north and the Dravidian peoples of the south, similarity in civilization and culture is not necessarily impossible.

skill to the Asuras and the Nagas. Trade and commerce, and especially seafaring, were unknown to the Vedic Aryans, but flourished among the people they displaced.

These references in early Vedic literature to Dravidian civilization are now being confirmed with the wealth of archaeological detail by the discoveries that are now being made in Harappa and Mohenjodaro in the valleys of the Indus. The facts that the statues dug up in Mohenjodaro show brachycephalic features with low foreheads and narrow oblique eyes, that the custom of burying did prevail in places like Nal, the occurrence of the figure of the Naga, the buildings, storeys-high which remind one of the gopuras of Southern India, would justify us in thinking that the civilization recorded was Dravidian rather than Aryan. There is little to justify the Aryan theory<sup>1</sup> of the origins of this civilization or even the modified view that they reveal the blending of Aryan with non-Aryan features, for it is not at such an early period of conquest that any such blending could have taken place. Whatever we may think of the theory that is being propounded by scholars of the affinity of the pre-Aryan civilization to the ancient civilization of Mesopotamian lands, and which pushes back the history of India by about 3,000 years, it may now be taken for certain that what took place in Mesopotamia took place in the Punjab and the Indian Doab—namely, the conquest of a superior people endowed with arts, industries, with culture and civilization by a race of hardy conquerors who were better than the people they conquered only in a capacity for organization and government and had certain adventitious aids in warfare, like the horse<sup>2</sup> and the mailed armour. The fate of the Sumerians at the hands of the Akkadians was also that of the Dravidians at the hands of the Aryans. As in the case of the Semites in Chaldea, the Aryans were able to conquer because the Dravidians were a collection of small peoples with no political cohesion among themselves. But their civilization cannot be denied.

<sup>1</sup> Cf. Viswanatha, *Racial Synthesis of Hindu Cultures*.

<sup>2</sup> See references in Viswanatha, *Racial Synthesis in Hindu Culture*, p. 42.



We learn from these discoveries in the Indus valley that the ancient Dravidians of the north knew the art of smelting and working in iron, in the making of bronze and the gold vessels of luxury. The arts of warfare, of agriculture and of industry, had reached a fairly high degree of development as the bronze and iron instruments found in the burial-grounds discovered at Adichanallur, Perumbair and other places in Southern India go to prove. They differed from the Aryans in their custom of burying the dead. The Tamilians were great seafaring traders and from the beginning flung their commercial relations as far west as Ur of the Chaldees and Africa and Egypt and Rome and as far as Java in the east. The ancient Dravidian States were made of a number of villages with little or no articulation between them. Their society was divided into clans, though the Caste system could not have existed as a comparatively inferior class like the Vellalas among the Tamils could marry their girls into the fighting clans and thus served in the army.<sup>1</sup>

### DRAVIDIAN HISTORY

It is with the Dravidians that the history of India begins, and it is with the Dravidians of the south that every historical account of India ought to begin. For it was in the south that the Dravidians founded their most important and enduring States. While the Aryans were finding their way in the north, the Dravidians of the south had already founded States like those of Vidharba, Kalinga and Andhras mentioned in the Mahabaratha. The Andhra kingdom with its 30 fortified townships, an army of 100,000 infantry, 2,000 horsemen and 1,000 elephants under the Satavahana kings, included the Northern Circars, Berar, the Central Provinces and Hyderabad of to-day. The more historical dynasties of the south were those of the Cholas, who ruled in the country round about Trichinopoly and Tanjore (corresponding roughly to the modern districts), the Pandians with the territory comprising the modern districts of Madura and Tinnevely, the Cheras, in modern Cochin,

<sup>1</sup> Slater, *Dravidian Culture*.

Travancore and British Malabar, the Pallavas, with their capital at Kanchi. The southern dynasties did not seem to have been bitten by the desire for imperial expansion to the same extent as those of the north were. But even in the south attempts at imperial expansion were not wanting. One such was that of the Chola King Karikal in the fourth century A.D.,<sup>1</sup> who, by defeating the combined army of the Pandyan and the Cheras, brought the whole of southern India under one sway. Another such attempt was that of Sri Mara of the Pandyan, who extended his rule to Ceylon in the ninth century A.D. And in the twelfth and thirteenth centuries a succession of able and distinguished rulers made this second empire of the Pandyan a real power in the politics of South India,<sup>2</sup> extending it as far north as Nellore and Cuddapah. Still another southern attempt at imperial expansion was that of the Cholas about A.D. 1023, when Rajendra Chola, after subduing southern India, sent his army to Behar and Bengal. These examples of state-making and imperial expansion of the Dravidians are taken from comparatively late periods, but this is inevitable in the present state of historical evidence. But it is not fanciful to suggest that what they did in later times they must have done, although on a smaller scale, in their early history. There thus seemed to have been frequent attempts of southern Dravidians at the formation of States, small and large. These attempts at bringing about the formation of large States were as futile as those of the Aryans in the north. The Dravidians, much less than the Aryans, did not succeed in their attempts at the making of the State. But it was the Dravidians of the south who set the example and the pace to the Aryans in the business of the formation of States. Not only in geology, but in history, South India is the more ancient part of India.

#### CAUSES OF THE DRAVIDIAN FAILURE

Why the Dravidians were not able to form large imperial

<sup>1</sup> Srinivasa Iyengar, *History of the Tamils*.

<sup>2</sup> Nilakanta Sastri, *The Pandyan Kingdom*.

States and bring about the unification of the country is explained by their social organization and philosophy of life. We are not concerned here much with the religion, philosophy of culture of these Dravidian peoples, except so far as they influenced their social organization. But here we are confronted by a formidable difficulty. There is very little evidence left of these peoples by themselves or their conquerors. But it is permissible to suggest that the beliefs and practices of the Dravidian tribes that still exist in India uninfluenced by Hindu culture were also the beliefs and practices of the ancient Dravidian peoples. There is such a similarity between the ancient and modern Dravidians and between the various Dravidian peoples of to-day that we are justified in thinking that the beliefs and practices of the present-day Dravidians are those of the Dravidian peoples that contended with the Aryans for victory in ancient India. As for the rebuttal to this presumption that the Dravidian peoples whom the Aryans knew were civilized, while contemporary Dravidian tribes are more or less savage, it may be pointed out that the Vedic hymns themselves mention instances of tribes, who, after the defeat by the Aryans, took to the jungle and the cave again. And it is a fact that religious belief and social organization persist long after civilization has declined or changed its form. We have the example of contemporary Hindus, in spite of their acceptance of western civilization in the shape of furniture, motor-cars and railways, still adhering to ancient religious beliefs and social taboos.

Although the Dravidians were eventually conquered by the Aryans, they were not always poltroons in battle. No people, not even the Jews, prayed so fervently and so frequently to the gods for success in battle as did the Vedic Aryans. The prayers that they addressed to Indra and Agni must have been wrung from hearts stricken with anxiety and depressed by despair of overcoming their formidable enemy. Across the ages, the Vedic hymns still palpitate with the fear and trembling of a people who had ventured far from their base and had counted on easy settlements in fertile fields. In their despair the Vedic

peoples invented charms, spells and sacrifices and pressed them into service to defend themselves against their terrible enemy. But in spite of all that, the Dravidians were conquered, mainly because they were many and the invaders were one. The conquest of settled agricultural peoples by a nomadic pastoral tribe is not such a rare event in history as to allow us to be surprised that the Dravidians went down before the alien Aryans.

#### DRAVIDIAN SOCIAL ORGANIZATION

Taking the social organization of the present-day Dravidian tribes as being presumably that of the Dravidians of Aryan times, we find certain features which may be said to have influenced the course of Aryan expansion. According to the facts brought together by Colonel Hodson in his *Primitive Culture of India*, we find, firstly, that the social groups into which these tribes were divided were very small. The Kheryas move from jungle to jungle in not more than two families at a time, the Birhors in small groups of not more than ten families; the Irulas of South Arcot dwell scattered in huts never more than two or three in one place, the Kadirs of Cochin live in groups of ten, fifteen or twenty huts like the Kukei clans in Assam "whose peculiar vagabond strain," according to Colonel Shakespeare, to whom we owe our knowledge of this tribe, "if not controlled, leads to villages splitting into hamlets, and hamlets subdividing till in the Manipur hills we find single houses in the midst of dense jungles several miles from the next habitation." The Dravidian social group therefore was a very small social group. The same cause that operates now may have operated in ancient times to keep down the size of the Dravidian social group. According to Colonel Hodson, "the dominance of the bamboo jungle and the custom which prevails among the Kukei Lushai clans, by which each son of a chief as he attained the marriageable age was provided with a wife at his father's expense and given a certain number of households from his father's village and sent home to a village

of his own, keep the tribes small." Or it may be as Lyall<sup>1</sup> observes in Rajput tribes, that "the difficulty of marriage has been one cause of that constant *morcellement* or splitting up into isolated groups, the larger group into smaller, over which is a radical law of the dynamics which govern the construction of primitive societies." This was how the ancient Dravidians colonized and civilized India. In tiny little settlements, they cleared primitive India of its jungle and wild beasts, and if left to themselves would have completely spread themselves over the whole of the country. But this kind of peaceful and piecemeal penetration and settlement requires a strong governmental authority to back and support the settlers as the modern Russian moujik found when he spread over Central Asia. This protecting and unifying power the northern Dravidians of ancient India had not had time to build up when the nomadic Aryans came down upon them.

#### DRAVIDIAN PHILOSOPHY

More important than the size of the social group was the philosophy of life that animated the ancient Dravidians. The belief in reincarnation is dominant among the Dravidian tribes of to-day. The Oraons hold that the dead man has two shades, one that goes to Markha or heaven and the other that remains among them. The two souls of the Birhors are reincarnated together in a new body which need not always belong to his own tribe. According to the Kols, the soul of man is not destroyed at death, but continues to exist in a shadowy body. According to the Lushais, the soul of man and woman enter the bodies of leopards and tigers. The belief in a second and future life is found in most of the modern Dravidian tribes. The Garos believe in a speedy release from their purgatory or spirit land to which the souls of the dead are sent with the hopes of a happy reincarnation; the Lushais believe in a spirit world beyond the grave, access to which is not attained by a life of virtue while on earth, but by the due performances of sacrifices

<sup>1</sup> *Asiatic Studies*, First Series, ch. VII.

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and the killing of men and certain animals. The idea of the transmigration of souls is common to many Dravidian tribes of to-day and must have existed among the Dravidians that came into contact with the Aryans.

### DRAVIDIAN TRANSMIGRATION

Among the Aryans when they entered India, as they reveal themselves in the earliest Vedic hymns, this doctrine of transmigration did not obtain. The Aryan religion was a simple nature worship. The doctrine of the transmigration of souls the Aryans must have obtained from the Dravidian peoples whom they conquered. "The doctrine of transmigration of souls," says Professor Macdonnell, "is entirely absent from the Vedas and early Brahmanas. It seems probable that the Indian Aryans borrowed the idea in a rudimentary form from the aborigines." It was this doctrine of the transmigration of souls, transformed by Brahman philosophers into the philosophy of life known as Karma, which came to be accepted from the Dravidians by the Aryans when the latter settled and colonized the country, that confirmed the tendency to small States which had been the primitive instinct of the Dravidian peoples.

### DRAVIDIAN CONQUEST OF ARYANS

When, like most conquerors, the Aryans accepted the civilization of the people whom they conquered, the Dravidians, like many other conquered peoples, had their own revenge. Like many another conquered people which was more civilized than its conquerors, the Dravidians imposed their civilization and culture and religion and philosophy upon the Aryans.

*"Graecia capta ferum victorem cepit et artis  
Intulit agresti Latio."*

A comparison of the state of the society depicted in the earliest Vedic hymns and that described in later Vedic books or in the Epics reveals the measure of the change that had come upon the Aryans. In the early Vedic period, the Aryans were a simple

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pastoral people divided into classes determined by occupation, worshipping the forces of nature represented by individual gods. In the later Vedas and in the Epics we find them a highly cultured people divided into rigid castes, founded upon a religious philosophy. The Purusha-Sukta of the Rig-Veda, accepted by modern scholars to be the product of the latest Vedic period, has been called the "Magna Carta of the Caste system."<sup>1</sup> It would be hardly justifiable in the face of the facts of history now available to attribute all the later development of Hindu religion, philosophy and polity to the influence of the Dravidian people. But something must be laid at the door of their influence.

The Aryans came under the influence of the more sophisticated, the more complexly built, the earth-born and earth-touched religious beliefs and practices of the Dravidians. The religious belief of the conquered got the conqueror in its grip. Ancient conquering peoples, either because one religion is as good to them as another or with deliberate political motive, were ever ready to accept the religion of the conquered. It is one way of reconciling the conquered with the idea and fact of conquest. That is what Clovis did for the Franks when he vowed "to adore what he had burnt and burn what he had adored" till his conversion to Christianity, and set France on the way to political unity. That is what Theodoric and the other Arian rulers of the Goths and the Visigoths did not do, to the detriment of the unity of the countries they were set to rule. The belief in reincarnation and transmigration of souls which the Aryans took from the Dravidians, their poets and philosophers developed in later times, probably when they settled down in Madya Desa, the doab of the Ganges and the Jumna, into the doctrine of Karma.

### KARMA AND INDIAN HISTORY

This doctrine of Karma came to be the foundation of the religious and moral philosophy of the Hindus of history. As

<sup>1</sup> Baines, *Ethnography*, etc.



such it influenced their social organization. We have seen how small in size was the typical social group of the ancient Dravidians. On this small social group, the doctrine of Karma was allowed to play when the institution of Caste was born. It is a mistake to suppose, as does Dr. Gilbert Slater,<sup>1</sup> that Caste is a Dravidian institution, for we find no trace of its existence among the present non-hinduized tribes of Dravidian peoples. The principles of Caste were not rigidly observed among certain brahminized castes of Southern India, as is shown by the Tamil saying, "The Kallan became a Maravan, the Maravan became an Agamudayan, who little by little became a Vellalan," and by the fact of the possibility of intermarriage between the Agamudayan and the Maravan. The four castes of Aryan India never existed among the Tamil people. Beside the Brahmans there were many more than the four castes, mainly tribes converted into castes. The eight social grades that exist among the Rāngkōl and the Bête of the Kukei tribes of Assam are, says Baines,<sup>2</sup> like castes, with the all-important difference that they intermarry with each other and with other tribes. Only exogamous groups and clans for the most part exist among the Mundas, the Oraons, the Santals, the Kukeis and Lushai of Assam and presumably existed among their ancient ancestors. And only classes existed among the Aryans of the early Vedic hymns, classes based upon difference of occupation. These classes probably tended to become hereditary for an exaggerated idea of the heredity of physical and intellectual qualities is the product of superficial observation in all ages.<sup>3</sup>

What converted classes into Castes in Aryan India was the Dravidian doctrine of Karma. The acceptance of this religious belief which developed into the later maxims of popular religion was what effected the tremendous social revolution which took place some time between the period of the entry of the Aryans in the Punjab and the period of their settlement in the

<sup>1</sup> Slater, *The Dravidian Element in Indian Culture*.

<sup>2</sup> *Ethnography, Castes and Tribes*, etc.

<sup>3</sup> De Candolle, *Histoire des sciences et des savants*.

Madyadesa. The doctrine that men are reincarnated in subsequent births and that souls migrate from body to body, came as a revelation to the priests and philosophers of the Vedic Hindus. For here was a doctrine which could solve to a degree of satisfaction which impressed those ancient speculators the problem of the existence of evil, of suffering and punishment. The doctrine that men are what they are because they were what they were in some previous existence imparts to the believer a feeling of satisfaction. In this doctrine was found the key to the problem of human life.

#### KARMA AND CASTE

The doctrine of Karma was a popular doctrine from the beginning, because it was based on the religious traditions and beliefs of the common people. No one can deny its philosophical value, for it divides the world with the moral philosophy of theism. It influenced the life of the family and of society. It took hold of the class and group life of the Aryans and the Dravidian people and shaped it in its own image. Social classes, before the doctrine of Karma gave them a philosophical and religious sanction, were divided from each other by difference of occupation or office. If they had been left to themselves, they would have become fluid and interchangeable as in the rest of the world, but the doctrine of Karma made them rigid and unchangeable. Men were born in a caste because of the things they had done in the caste in which they had been born in a previous life. They must therefore work out their karma in the caste in which they are born. To do otherwise, to attempt to change one's caste, was to fly in the face of the laws of nature and of God. Caste thus came to have its distinctive attribute. It was the contribution of India to social organization. It was armed by this institution that the ancient Hindus set about their task of peopling the vast plains of India and organizing the country into the polity that it needed.

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### CASTE AND INDIAN HISTORY

Criticism of Caste has been the fashion with political critics ever since it came to be known to the West. Such criticism has found a place in these pages in regard to its value as a permanent social institution. But it would be unhistorical to deny that it rendered some important service to ancient Hindu society. It gave the Hindu peoples the social and group organization they required. It took up the groups of the Dravidian tribes and redistributed them according to occupation or race and thus enlarged them. It enveloped them with an outer cover. It gave them a unifying idea and aspect. It gave them the moral and social discipline they required. Caste morality, i.e. the doing of the duty of one's caste is not the highest kind of morality, for according to its idea there is not one universal ideal of perfection attainable by men of every social rank and class, but there was a different morality for each different caste. As Krishna advised Arjuna, the doing of the duty of one's caste was the supreme duty of man. The story<sup>1</sup> of Rama killing a chandala for ascetic performances "on account of a good action which thou art not allowed to do" is a terrible indictment of the morality of Caste. But Caste morality was good as far as it went, although it did not go far enough. It trained and disciplined the wild jungle tribes that lived within its jurisdiction into peaceful social life.

### THE SERVICES OF CASTE TO INDIA

Caste was an ordering of the world which at any rate guaranteed social peace and order; nor was it altogether inimical to progress. It seized one of the elements of progress, specialization in work, and ran it to death. Hereditary occupation thus led to a certain high level of excellence by ensuring a hereditary succession of some ability. The artistic excellence of some of the art and craft work of India like that of the potter and the goldsmith is due to this hereditary occupation which

<sup>1</sup> Quoted in Alberuni's *India*, ed. Sachau, Vol. II, ch. LXIV.

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Caste ensures. The memory and the subtlety of the Brahmin, the chivalry of the Rajput, the patience and laboriousness of the peasantry, the shop-keeping virtues of the Bannia are all due to the idea and institution of Caste. It also served to some extent the cause of political unity, for it took up artificial and linguistic divisions and substituted for them the less-dividing line of social ranks and classes dependent upon occupation. It also served the cause of liberty within each caste. There was nothing to prevent a man from rising to the highest position open to his caste.

### THE DISSERVICE OF CASTE

The vice of the system, however, was that it was based upon birth and the worth of past lives and not upon the personality of the individual or the worth of the present life. It gave too much weight to the past and little to the present life of man. It was more a principle of restraint than of liberty. It emphasized the importance of the class and the group and underestimated the rights of the individual. All the social and political work that it did for India led India only half way. Its moral and social discipline led the individual into grooves of conduct which no doubt secured a certain average of morality. But railed morality, like that of Caste, can never lead to the freedom which is the condition of moral perfection. It is significant that the sannyasis and rishis of India all went out of caste and broke most of its commands before they attained to the height of their holiness.

### CASTE AND THE UNITY OF INDIA

The political unity that Caste allowed was halting, partial and emasculate and never was able to embrace the whole of the country. The injunction of the Atharva Veda, "The rede is common, common the assembly, common the law," was never realized beyond the range of the caste or the village. On more than one occasion Caste sold the pass of Hinduism during the wars of Hindu kingdoms against the Muslims and

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the European powers. The progress it ensured was only up to a certain point. The liberty it tolerated was liberty to do the work of the caste and did not serve the highest purpose either of the individual or of society. It proceeded on the false presumption that man's birth settled for him his brain power, his moral capacity, his contribution to social life, whereas liberty and progress require that the individual should be capable of realizing his personality in whatever walk of life his native and acquired qualities may entitle him to choose. Caste denies the possibility of education which is bringing out the best of the individual. And that is its death warrant as a social institution.

### CASTE AND INDIAN SOCIAL PROGRESS

By the side of the good work in the way of social discipline and consolidation that Caste did for the aboriginal tribes whom the Aryans incorporated into Hindu society must be remembered the debit side of the balance sheet. Many good customs of the Dravidians the tribes were made to renounce when they entered the circles of Hindu society. Widow marriage was thrown overboard. Exogamy was displaced by endogamy, as among the brahmanized tribes of the Mundas and Oraons of the central belt. Late adult marriages gave way to child-marriages as among the brahmanized Santals of to-day. A varied and generous diet is being replaced by a Brahman diet among some of the Kukei tribes in Assam. This process of hinduization which contemporary observers have noticed as among the Mongoloid Manipuris, the Kol tribes of Chota Nagpur, must have taken place on a large scale and frequently in ancient times.

### CASTE AND THE INDIAN STATE

It was armed with the institution of Caste that the ancient Hindus made up of the Aryans and Dravidians proceeded to the political organization of India. They started on the lines

set out for them by the Dravidian peoples whom they dispossessed, and divided by their social organization into small petty groups remote from and unrelated to each other. The small petty groups of the conquered did not call for more than small petty States instituted by the conquerors. It was probably this that was the cause of "the development of a parochial separation" rather than, as Baines thinks, "the presence of large bodies of alien helots"<sup>1</sup> for which we have evidence neither from history nor from contemporary savagery. They began with small petty States. And Caste proved itself to be in every way inimical to the establishment of large States. The army of a State founded on Caste has necessarily to be small; for only those who are hereditary warriors can form the army of the caste-built State. Increase in the army must be natural, due to the excess of births over deaths in the caste of warriors. It could not be artificially increased by recruitment from all and sundry in obedience to the periodical demands of the State. The needs of actuality did provide for an increase in the ancient Indian army by the custom of the freedom of the caste of warriors being conferred on tribes who had not yet been brought within the rule of the Caste system. Thus many Rajput clans have been recruited even down to modern times from surrounding aboriginal tribes. But this artificial progress was necessarily slow, as it could be resorted to only at intervals and the supply would be very soon exhausted. The large supplies of soldiers furnished by the large numbers of people in all castes who might be unfit for the occupation imposed on them by their birth, but might be made fit for soldiering were never tapped. Caste with its marriage inhibitions is not so favourable to an increase of population as is the law of free marriages. At the present moment<sup>2</sup> the rate of increase of population among Mussalmans and Christians in India is much higher than among caste Hindus.

<sup>1</sup> As is the opinion of Baines in *Ethnography of Castes and Tribes*.

<sup>2</sup> According to the census of 1930, the rate of increase among Christians was 32 per cent., among Mussalmans 17 per cent., while among Hindus it was 10 per cent.

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### THE POLITICAL PETTINESS OF CASTE

With the armies and the population that Caste supplied, no great expansion of States could be set on foot in ancient India. The rule at the beginning of Indian history as at the end of the Hindu period was of small petty States. When the Aryans entered the Punjab, the Saptasindhavah of the Vedas, they consisted of small tribes organized on a patriarchal system ruled by chiefs sometimes hereditary, sometimes elected, the tendency being for the elected soon to be converted into hereditary monarchs. And in the Punjab ancient Indian history reveals the existence of a number of small tribes, the Puruis and the Chedis, like those of the Abhisaras and the Gandaras or the Malavars, whom Alexander defeated in battle, or like the Lichavis and other tribal republics spoken of in the Buddhist records, or like the Adityas and the Viswa Devas and the Devas spoken of in the Atharva Veda. The conquering march of the Aryans towards the east when they entered the Doab of the Ganges and the Jumna, the Kuru Panchala country and founded the Aryavarta of the law books, and farther down in the South as related in the *Ramayana* was speeded up by their power of incorporating the alien Dravidas into their society. As Mr. Shama Sastri<sup>1</sup> points out, the Caste system had not at that time become so rigid as to prevent Aryan Brahmans from taking Sudra wives and remaining Brahmans and men and women of the Sudras castes being allowed to take part in the most solemn sacrifices of the Aryans. But this incorporation with the Dravidian tribes did not lead to the formation of any larger States than those which they had attempted in the Punjab. The Kauravas who ruled over Indraprastha, the Panchalas who held sway over the country round about Kanauj, the Videhas who established themselves between the Gumti and the Kusi, the Kosalas between the Ganges and the Gumti, the Kasis near Benares were all founders and rulers of small petty States. In Madhyadesa also

<sup>1</sup> *Evolution of Indian Polity.*



there were the States of Ayodhya and Pataliputra. And as the ancient Hindus advanced eastwards, filling the valleys of the Jumna and the Ganges and then southward and south-eastward, States of the same petty size were also set up.

It was forming such small States that the Aryan invaders began to settle along the rivers of the Punjab and the Indus and the Ganges and dribbled through the gaps in the east and west into the south. The onward course of the Aryans in ancient India was not always a *Drang nach Osten*. They went wherever the rivers led them. And the first of the rivers to lead them to their purpose was the Indus. The Vedic legends of King Svanaya and Haryasva<sup>1</sup> show signs of this colonization of the Indus region by the ancient Aryans. There is a legend<sup>2</sup> indicating the settlement of Kathiawad by Rajput tribes from Muttra.

#### HINDU ATTEMPTS AT THE UNIFICATION OF INDIA

Now and then the spirit of imperial expansion which fires the heart of every great ruler confronted by a waste of territory would impel a king here and a chief there to found a larger State than usual with a view to incorporating the whole of India into a great empire. The ideal of bringing the whole of India under one Chhatri, the ideal of Digvijaya has impelled the ancient Hindu rulers into attempts at expansion. But their attempts seemed doomed to failure. The earliest of these imperial attempts known to history was that of the Mauryas. Chandragupta (322–298 B.C.) began it. He went northward, destroyed Seleucid rule, the legacy of Alexander the Great, in the Punjab and added it to his kingdom of Magada. His grandson Asoka (274–236 B.C.) continued the great work, extending the limit of the Mauryan State to the south as far as the northern Pennar. With an army of 60,000 infantry, 30,000 cavalry, 9,600 war elephants and chariots, he is said to have carried his armies victorious over three-fourths of India. Nor

<sup>1</sup> Viswanatha, *Racial Synthesis in Hindu Culture*.

<sup>2</sup> Baines, *Ethnography*, etc.

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was it a mere conquest. The conquered territories were well organized for government. For the central government was organized in six administrative boards. The communications of the country were maintained by a network of roads, the civil officials were numerous and scattered all over the country.

### THE MAURYAN EFFORT, 305-250 B.C.

The Mauryan effort at unification was largely helped by Buddhism. The desire for propaganda took the arms of Asoka south and west. Its doctrines of the unity of mankind certainly gave the impulse to political unity a powerful stimulus. With the fall of Buddhism the dominion of Caste and the petty State resumed its reign once again, and if we are to subscribe to Mr. Shama Sastri's<sup>1</sup> ingenious theory that the Caste system was invented in all its iron rigidity with the endogamous marriage of Brahmans in the place of the former plurality of non-Brahman wives and with the taboos about vegetarianism and inter-dining as a protective measure against the return of Buddhism or Jainism, the future of Indian political unity became gloomier than it ever had been before. The political reaction organized by the Brahmans against Buddhism took the form of a creation of a number of small petty States with Sudras as kings but Brahmans as priestly guardians. It looked as if to defeat Buddhism in detail the Brahmans replaced the large Buddhist State by numerous petty States. The old Kshatriya States were replaced by Sudra States of Yadavas, Pulindas, Nagas and Abiras. The multiplication of such small petty States created so many centres the more of Brahminism. The Dravidians were once more coming into their own politically, but under Brahmin tutelage.

### THE GUPTA EFFORT, A.D. 330-455

The Mauryan effort at the unification of India came to an end with Asoka, and his empire was split up into petty States once more. Another great dynasty, the Guptas, with their capital at

<sup>1</sup> *Evolution of Indian Polity.*

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Kanouj, took up the task. The ideal of Chakravarti and Digvijaya animated the greatest of the Guptas. Samudragupta about A.D. 350 extended his empire till it included a large portion of northern India. He struck first towards the south, especially on the east coast as far as the Kistna, bringing a number of Dekhan kingdoms—Kosla, Mahakantara, Pithapura, Kotura, Devarashtra—under his sway, conquered the forest tribes of Central India and in the east Kamarupa, Simmaha and Kushi-puda, and subdued the tribal republics of the Yadidehas, Abhiras and others in the west. His sphere of influence extended as far as the Himalayas on the north and Kistna in the south. Samudragupta's sovereignty in India was signalized by the Aswamedha, the horse sacrifice which had been in abeyance for 400 years. After Samudragupta's sovereign sway in India as Maharajadiraj, the Gupta empire about the beginning of the fifth century A.D. went the way of the Mauryan empire that had preceded it.

### HARSHAVARDHAN'S ATTEMPT, A.D. 606-647

The third attempt at imperial expansion in the north was that of Harshavardhan in the seventh century A.D. Starting from the nucleus of a small kingdom in the Punjab, Harshavardhan for five years was constantly on the move, "the elephants were not unharnessed nor the soldiers unhelmeted," and succeeded in conquering the five Indias of antiquity and bringing the whole of northern India from eastern Bengal to the Punjab under one sceptre. The attempt of Harshavardhan was frustrated by the movement of a Deccan king, Pulikesin II, from the south.

### THE VILLAGE-STATE OF ANCIENT INDIA

The fact of the matter was that although most of these imperial dynasties knew how to conquer, they did not know how to hold what they conquered. The internal organization of each of these States of ancient India did not fit them for imperial expansion. The ancient Hindu monarch was not an absolute monarch. The more is the pity when we remember what

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absolute monarchies have done for the making and expansion of such States as France, Prussia and Spain and Russia. The power of the ancient Hindu king was limited by that of the priests, the sabhas and sangas and mahaparishads of the people, the power of custom and the isolated self-government of the villages. Ancient Indian States were States of villages, and towns were few and far between them. In all northern India in Harsha's time there were only twenty-five towns.<sup>1</sup> The assemblies of the Vedic and Buddhist periods, although they served to limit the power of the king, did nothing to articulate and organize the connection between the village and the capital. The sabhas and sangas were hardly national assemblies. There was always a hiatus between the village and the capital, between the circumference and the centre of the ancient Hindu State. Feudalism might, as in the later Rajput States, have given the ancient Hindu State the articulation that it sorely needed. But unfortunately feudalism was never able to perform in this country the great service it rendered to the formation of the States of mediaeval Europe. Feudalism in India was crossed and neutralized by Caste.

### DRAVIDIAN STATE ORGANIZATION

Nor did the internal organization of the Dravidian States of southern India fit them any better for imperial expansion. It was good enough for the efficient administration of a small State. The administrative system of the Cholas with their irrigation works, their system of village self-government, their hospitals and hostels, compels our admiration. With its limited monarchy, aided by the five great assemblies (the Ainperumkulas), its village self-government, its intermediate poligars, the ancient south Indian government ruled people fairly well, gave them the blessings of peace and order and the gifts of tanks and wells and chatrams. But Caste, which the Aryans had brought with them in their drift towards the south and the philosophy of life and politics of Karma soon paralysed all

<sup>1</sup> Mukerji's *Harsha*.

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impulse towards expansion in the south as in the north. "La civilisation brahmanique," says Sylvain Levi, "est une anarchie systématique dans les formes hiérarchiques." It is no consolation to the peoples of Dravidia that it was their own primitive beliefs in regard to the soul that captured the Aryans and asserted the doctrine which made Caste the disintegrating force of Indian society and government. The genius of Dravida may have grinned with mischievous pleasure through the ages of history at the paralysis which overcame the Aryan conquerors through their adoption of Dravidian beliefs. But it can be but poor consolation to the Dravidians of to-day.

### FAILURE OF THE NATIVE ATTEMPTS

In spite of the unity of religion and philosophy, in spite of practices like the periodical pilgrimages from Haridwar to Rameswaram, the political unity of the country was never reached. The fundamental unity of India was only one of culture and was not translated into effective political practice or institutions. The vice of the ancient social organization of Caste sapped the energies of rulers and ruled and frustrated all the splendid efforts at unity for which we remember an Asoka, a Samudragupta and a Harsha. Caste could not furnish those ancient Hindu States with the large armies, nor with the large and efficient bureaucracy necessary for the government of such a large country. Caste killed political adventure, which has played a great part in the making of the State elsewhere. When Arya Nayuga, the Madura general, wanted to make himself king, he was told by his guru that it was the business of a Vellalan to till the soil and that men would be shocked to see a man of his caste seated on the throne.<sup>1</sup> Nor did it spread the interest in the business of government throughout the different grades of society. For the peasantry and the traders were quite willing to allow the business of government, except the petty government of the villages, to be monopolized by the Kshatriyas and the Brahmans. Caste,

<sup>1</sup> See Nelson's *Madura*, Part II, p. 105.

which erected division into a principle of life, often paralysed the military action of Hindu peoples. For instance, Gingee, the great key fortress of south India, was lost to the Muslims by Tirumala Naik of Madura and his allies in 1655 because their soldiers, being men of different castes, quarrelled with each other daily to the point of rioting; and the Nayaks of Madura, early in the eighteenth century, lost ground before the smaller Marava State of Ramnad because the army of the king of Madura consisted of bodies of men belonging to different castes, who were for the most part strangers in the land in which they lived, and animated by no feelings of patriotism or of loyalty to the king.<sup>1</sup> The judgment of Mr. Vincent Smith that the Indian Caste system is unfavourable to military efficiency "has been proved on many a battlefield of Indian history."<sup>2</sup> It was Caste that prevented the ancient Hindus from achieving the unity and the proper political organization of the country. Caste, which multiplied and preserved the small petty group and gave a constitution to the spirit of division, could not build the large imperial State which the size of the country demanded.

#### THE BEGINNINGS OF THE FOREIGN EFFORT

With the failure of the native attempts to organize the unity of India it had to be left to foreigners to achieve what native genius could not accomplish. Even during the period of Hindu rule there were attempts made by foreigners to bring India under one dominion. The ephemeral invasions of Darius and Alexander were followed by the more or less permanent settlement of the Seleucids in the Punjab from 200 to 100 B.C.; of the Yavanas between 200 and 53 B.C., the most famous of them being King Milinda of the Buddhist chronicles and of the Questions, who about 150 B.C. led a merely military expedition as far as the Indus delta and Kathiawar by way of Rajputana; of the Sakas, who established themselves in Sind from the Indus delta and spread to the Punjab about 200 B.C.; and the Kushans,

<sup>1</sup> Nelson's *Madura*, Part II, pp. 135 and 235.    <sup>2</sup> *Oxford History of India*.

who occupied Sind, Kathiawar and Malwa, the most famous of them being Kaniska, who settled the canon of the Buddhist gospels about A.D. 78 and ruled over almost all the Punjab. But none of these peoples, whatever their influence on the art and literature of India, did anything to achieve the unity of the country. It was not these small peoples, with their base of operations and rule outside India proper, most of them hinduized in religion and custom, that could achieve the task which required the activity of giants.

## THE MUSLIM EFFORT—A.D. 1000—1757

With the coming of the Mussalmans it was that the work of foreigners organizing India through foreign agency was first attempted on the large scale. The Mussalmans who came to India were all Turks, for the Arab settlement in Sind under Muhammad Kasim in A.D. 714 did not affect the main course of Indian history. And the Turks did in India what they did everywhere they went. They subjected India to a series of invasions which woke her up from her agelong listlessness. They overran practically the whole of India, and always held before them the idea of an India united under one sceptre, and came very near reaching that ideal. They changed the system of government with a view to realizing this ideal of centralized unity. Except a few, these invaders settled in the country, and as a result set themselves to organizing it on the basis of unity. But some of these were merely invaders who simply blew a blast that awakened India from her petty self-sufficient life, who came, saw, conquered and left. Such were Muhammad of Ghazni, who subjected India to fifteen distinct shocks between A.D. 997 and 1026 and roused the Hindu rulers to individual defence but not to united effort; Muhammad Ghor, who between 1175 and 1206 raided the native kingdoms of northern India from Guzerat to Bengal; Timur, the Tamerlane of Western history, who passed through India like a hot blast of wind (1338); Nadir Shah the Persian, who came in 1739 and left the country satisfied that he had seen Delhi bathed in blood, and Ahmed Shah Durani (1758—



1761), who brought down the Mahratta empire, but could not establish his own, tripped as he was by the stone of stumbling which had floored the great Alexander, a mutiny of his soldiers who refused to go any farther.

#### SUCCESS AND FAILURE OF THE EARLY MUSLIMS

It is not with them that Indian history is concerned, but with the dynasties that settled to rule and organize India. Those were the Slaves, who ruled from 1206 to 1288, the Khiljis from 1288 to 1310, the Toglaks from 1321 to 1414, the Saiyyids from 1414 to 1540, the Lodis from 1450 to 1526, and finally the Moghuls from 1526 to about 1750. The work of spreading Mussalman dominion over the whole of India was effected gradually and a step forward was taken in succession by these several dynasties. During the reign of the Slave Dynasty, mainly under the forcible leadership of Kutbuddin, Mussalman power extended over the Punjab, the Gangetic plains and over the modern provinces of Oudh, Behar and Bengal, up to the banks of the Brahmaputra. On the other side it had marched over Ajmere, Rajputana, Malwa and Guzerat. That is, the whole of northern India except the forest tracks of the Central Provinces was brought under one sceptre. Under the Khiljis, the Mussalman advance penetrated to the south. Allauddin Khilji in 1294, in a daring expedition, conquered the Dekhan and in 1309 Malik Kafur carried the Mussalman arms over Devagiri and Mysore as far south as Madura of the Pandyas. Before Malik Kafur had done this deed of derring-do, no power had embraced the whole of the country in a military occupation. The possibility of bringing the whole of India under one rule was brought within the range of practical politics. If the Mussalmans knew how to organize their conquests as well as how to make them, the unity of India would have been accomplished under them. The rulers of Delhi before Sher Shah had not found the secret of consolidating a conquest and their conquests were only ephemeral. The Deccan conquered by Allauddin Khilji and Malik Kafur broke up into a number of small king-

doms of which the most important was that of the Bahmanis. The unity of India achieved by the Muslims before the Moghuls was of short duration. But it was Sher Shah that taught the Moghuls how to organize the unity of India with an efficient and organized administration. The Moghuls, the greatest of them, even Akbar, copied from him.

#### THE MOGHUL EFFORT, A.D. 1526-1757

When Baber, the knight errant who went out to seek an adventure and found an empire, entered India in A.D. 1526, he had to rescue the country from the anarchy into which the weakness of the later Sultans of Delhi had thrown it. But it was not until the trials of his son and grandson had ended in the resounding victories of Panipat (1561) that Moghul rule can be said to have been established in the country. Akbar (1555-1605) was able to take up the task of organizing the newly founded rule, and he was wise enough not to be afraid of being a plagiarist from Sher Shah, one of the greatest rulers of India. With Akbar really began the expansion and consolidation of the Moghul empire of Delhi. He had, in fact, the task of re-establishing Muslim power in India. Guzerat was conquered in 1572 and in 1602 he became king of the Deccan. But Akbar, not more than his predecessors, could not be said to be supreme over the south, for the Muhammadan kings of Bijapur and Golkonda, not to speak of the kingdoms still farther south, disputed his title to suzerainty. But he was wise enough to set about the task of consolidating his conquests. In the reign of his grandson, Shah Jahan, in 1689, Bengal and Guzerat were under Moghul rule. But the work of consolidation of the Deccan had failed, as was proved not only by the resurgence of Hindu power in the person of the Mahrattas under Shivaji, but by Aurangzeb's difficulties in the Deccan. Aurangzeb was able to overthrow the Deccan kingdoms, but the success of the Moghuls in the south was ephemeral. With Aurangzeb's death in 1707 the Moghul empire entered on the period of its decadence.

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### CAUSES OF THE MUSLIM FAILURE

The fanaticism of Aurangzeb is often adduced as a cause of the fall of the Moghul empire. This theory assumes that the Moghul empire was very strong before him and that it broke in his hands. Nothing can be farther from the truth. The hold of the Moghuls on the country, as of all the Delhi Sultans, was slight. They, like their predecessors, had not been able to shake off the taint of nomadism. The Mussalman rulers of India were nomadic in their rule of India.<sup>1</sup> The internal organization of the State founded by the Mussalmans did not mark any great epoch-making progress. Although the Mussalmans brought a much larger portion of India under one rule than any native Hindu sovereign had done before them, the government of the country was as ill equipped to consolidate imperial conquests as ever before. The changes in internal organization were not radical. India continued to be a State of villages under Mussalman as under Hindu rule. A few changes were made in the central government, and only a little was done to fill that gap between the village and the capital which had been the radical defect of Indian administration during the centuries of Indian history. The hold of the central government over the country was still light.

### MUSLIM POLITICAL ORGANIZATION

The form of government that prevailed during the whole of the Muslim period may be described as satrapial. For, the main features of the satrapial form of government as we know it, for instance, from the history of ancient Persia were reproduced in the government of Muhammadan India. The governors or subehdars from the time of the Slave dynasty to the end of the Moghul empire were deputies appointed by the Padshah and dependent upon him. They held their office under the one and only condition of remitting to the Delhi treasury

<sup>1</sup> See a detailed argument in the writer's articles in the *Journal of the Mythic Society*, Bangalore, of 1918.

the contracted tribute of the province, of furnishing the contracted quota of troops and supply of provisions to the royal armies on the march. Apart from this, they were allowed to rule their provinces almost as they pleased. The subahs and naib subahs of the provinces of Moghul India were despots in miniature. And often the governors set themselves up as rulers in their own right and in their own domain whenever the supreme ruler showed signs of weakness. It was thus that the Nawabs of Oudh and the Nizams of Hyderabad in course of time became Indian rulers.

#### SATRAPIALISM IN INDIAN PROVINCES

In a subordinate capacity, the viceroy of the Emperor of Delhi was the commander of the army, chief judge in criminal matters and the source of honour and authority in the province. His authority was limited by the Sultan's right or power to recall him, by the right which could not always be realized, of appeal from the people to the supreme ruler, and by the existence in the province of certain officials appointed and directly subordinate to the Sultan. Besides these officials, who acted as a check upon the rule of the Nawab or Subehdar, an additional obstacle to provincial tyranny was found in the official spies, who were employed on a large scale by the most efficient of the Sultans of Delhi. Aurangzeb, it was said, used to know personally all of those men, and the wakhanavis and the khufianavis were supposed to be the ears and eyes of the Sultan. The existence in a subah of important feudatory native Rajahs with their semi-sovereign powers and of important zamindars and talukdars, who, although mere farmers of the imperial revenue, in course of time gave themselves a kind of seigniorial power over the people who at first paid them the Sultan's tax, but who afterwards became their tenants and dependents, was also used as a check on satrapial despotism.

Outside these checks, and especially in the times of the easy-going Sultans who filled the longer stretch of Mussalman rule, the provincial satraps wielded absolute authority without

let or hindrance. It was not with periodical visitations that the power of these satraps could be controlled and the remedies that were applied were generally irregular. Although the power of the provincial governors of Muslim India had some important checks to reckon with, it never had to suffer from the fear of regular supervision and control of an efficient central administration. In Muslim India there was not that practical and ordinary subordination of local government to central power which is the note of every government worth the name. The power of the provincial officials seemed to vary in direct ratio to their distance from the headquarters of the Sultan. Of course, the tyranny of the Sultans might have served as a check upon provincial tyranny, but they were effective only as a remedy for the worst and the most intolerable forms of misrule. No doubt the best among the Turkish rulers tried to obviate this bane of provincial government by sending circulars to regulate the task of the governors. But how far were these imperial efforts effective, what were the means of bringing the provincial delinquents to book? The provincial satraps, with their vast powers, the troops at their disposal, the subordinate officers under their thumb, were a power unto themselves and could afford to flout the authority of the central government. The inefficiency and tyranny of disobedient governors were generally brought to the notice of the supreme power by riots and rebellions.

#### THE NET RESULT OF THE MUSLIM RULE

The fact of the matter was, the Muslim rulers had not been able to shake off the taint of nomadism with which they had entered India. The Muslim dynasties of India merely camped in the country. They had ridden from conquest to empire on the horse. It was with their terrible cavalry that they broke down the power of the army of the Hindu rajahs. Conquest for the sake of conquest was their ideal. They would undertake, even the best of them, useless expeditions. Akbar and Shah Jahan, like Muhammad Tuglak, indulged in fruitless invasions of

Afghanistan. The degeneration of the manly character of the Muslim invaders and their victimization by the luxury of India is a fate that many nomadic peoples have met. The Muslim attempt at the unification of India, which had at one time seemed to approach success, ended ultimately in failure. It touched only the fringe of Hindu society. It did not go far enough into the foundations of society. The lesson that Muslim rule in India has taught is that empire in India, if it is to be successful, must be cultivated not only extensively, but intensively. On ordinary occasions in the daily round and common tasks of public life, there was no means by which, under Muslim rule, the authority of the central government could be felt in the provinces without putting the body politic out of gear. There was no separation of the civil and military power in the provinces, no royal courts of law before which the deeds of the satraps could be tried then and there, no royal officials endowed with magisterial powers in the provinces to serve as a check upon the provincial governors. Their authority and powers were too general, too great to be controlled in any effective manner by the central government. It was not so much misgovernment as want of central government that was the prime defect of Muslim rule in India. But it must be remembered to the credit of Muslim rule, that by providing and strengthening provincial government it marked an improvement on the village rule of the Hindu period. Provincial organization was the memorable contribution of the Muslims to Indian government.

#### THE NEGATIVE RESULT OF MUSLIM RULE

The Muslim invasions, although they did not succeed in organizing the unity of India, produced one good result. They created a reaction against foreign rule amongst the conquered Hindus. The old attempts to achieve the unity of the country through native instruments were again made. Two of these Hindu reactions against Mussalman settlement took place in the south and one in the north. The Sikh reaction in the north

we shall refer to at the time of its climax, when it tried conclusions with the power that has finally achieved the unity of the country. It was natural that the Hindu reaction against Muslim rule should be organized in the south, for it was in the south that the Muslim hold was weak and loose and the tradition of independence had not been withered by frequent foreign conquest. The earlier of these Hindu reactions was that of Vijayanagar. The rule of Vijayanagar, founded on the southern bank of the Tungabadhra in the fourteenth century about 1386, had soon extended itself south as far as Trichinopoly and in the time of Krishnadeva Raja (1501-1526), reached the zenith of its expansion when it conquered roughly the whole of the territory now occupied by the Madras Presidency and Mysore. But it was soon attacked and overpowered by a combination of the Dekhan Muslim powers and came to an end with a crash in the famous battle of Talikota in 1565.

#### THE MAHRATTA EFFORT—A.D. 1660-1761

Yet another attempt was made by native India to bring about the unity of the country as a reaction against foreign rule. It was as a supreme effort of native independence against Muslim subjugation that the Mahrattas aimed at empire in India. Founded among the hills of the Western Ghats and with the aid of hillmen called Mavalas by the "mountain-rat" Shivaji, the Mahratta empire was the thrust of Hindu Dharma against Muslim usurpation. From the refuge to which it had been driven in the Dekhan and gathering the Mahratta people together, Shivaji made religion serve his purpose. He scored brilliant successes in the guerrilla warfare which the terrain of his native hills and the composition of his troops favoured. Although he led expeditions as far south as Vellore and Gingee in the Dekhan, yet, at the hour of his death, his rule did not extend beyond the highlands of the Western Ghats. The weakness of his immediate successors brought the Mahratta empire into the hands of the Peshwa, who was originally only one of the ministers of Shivaji,



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the Ashtapradhan or Council of Ministers. The Peshwas proved to be the mayors of the palaces of the Mahratta Merovingians, who were afterwards confined to Satara. Balaji Viswanath, the first of the Peshwas, founded about 1715 the dynasty of Brahmin rulers, which organized the latest Hindu attempt at empire. Under the first of the Peshwas, Balaji and Baji Rao I, the Mahrattas extended their sway over the country as far as the Kistna in the Deccan, establishing their capital at Poona, and subsequently over Guzerat, Malwa and other parts of central and southern India. Under feudal chiefs like the Gaekwars, Sindia and Holkar, the Mahrattas established centres of influence in the heart of the Moghul empire. Under Balaji, the third Peshwa, about 1750, the Mahratta sway had extended as far east as Orissa and as far north as the Punjab. But with dramatic suddenness the far-flung empire of the Mahrattas crashed down in 1765 under the decisive blows of an Afghan adventurer, the Durani chieftain Ahmed Shah. The Mahratta confederacy never recovered from this blow and soon lost its way to independence and bowed to the onward march of still other alien arms.

### CAUSES OF THE FAILURE OF THE MAHRATTAS

The Mahratta experiment at empire failed for the same reason and from the same causes that other Hindu attempts at empire had failed. It is not necessary to adopt Mr. Vincent Smith's unhistorical description of Shivaji and the Mahrattas as robber chiefs and robber States in order to explain their failure. The Chauth and the Sar Deshmukhi may be interpreted as the tributes and subsidies levied on the subject-peoples and justifiable by the almost military occupation of the territories conquered. But the radical defect of Shivaji's administration was that it was not centralized enough for the purposes of a stable rule. The villages, with their panchayat self-government, were left untouched by Shivaji and the Peshwas and remained in splendid isolation from each other and from the centre of govern-

ment. The central government,<sup>1</sup> no doubt, with the Council of the Ashtaprahdans, its numerous *daftar* or secretariat, with its Karkhanas and Mahals, was seemingly well organized. The country was divided into provinces, and provincial affairs were no doubt supervised by Prant Amatyas and Brahmin Prant Sachivs. But there was not that intimate contact between the central government and local government which is necessary to keep a State together.

#### MAHRATTA GOVERNMENT

Even the small amount of centralization that Shivaji began to organize slackened under the Peshwas. The Patels and the Kulkarnis, generally hereditary officials, were attached to the village much more than to the central government. In the Prants or districts, the Kamisdars and the Mamlatdars acted as a check upon the local hereditary Deshmukhs and Deshpandes and Thanadars, but were also checked by the latter. A system of checks and counter-checks exercised by central and local officials upon each other was the device of the Peshwas to prevent corruption and inefficiency in Mahratta administration. This organization of administrative supervision, although it prevented certain abuses, hardly promoted the organization of the Mahratta State into a unified whole. The Peshwas, to gain extension of empire, still further loosened the bonds of discipline. In self-defence they acted counter to the policy of Shivaji and declared themselves the feudatories of the Moghul empire. They allowed the feudal system extensive and intensive development within the Mahratta confederacy. The fiefs called Jagirs or Saratjams were allowed to become practically independent and to be held in hereditary succession. The Mahratta empire degenerated into a confederacy and was swept off the face of India because it turned traitor to the ideals of rule and organization of its great founder.

<sup>1</sup> For a detailed description of Mahratta administration see Sen, *Administrative System of the Mahrattas*.

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### THE ATTEMPTS OF EUROPEANS—THE PORTUGUESE, 1498-1580

The modern native attempts at consolidating India from the north and the south and from the western side failed as had the foreign Muslim attempts from outside the country. The last of the attempts to extend political sway over the whole of the country was made by foreigners from the west and the south. The first of these foreign attempts from the south worked itself out on the western side of India. It was made by the Portuguese. The Turkish attempt we have seen to fall because it had not been thorough. The Portuguese were to show how a policy of Thorough would fare in the country. For the Portuguese were thorough if nothing else. They, like the Spaniards, had set out on their discoveries, not only for commerce and gold, but for the propagation of their religion. Within the small tract of territory between the Western Ghats and the sea, and turning round Goa as the centre, the Portuguese followed their policy of Thorough. They converted large numbers of the peoples to Christianity, sometimes by force, sometimes by offering privileges of government to the converts. They imposed western civilization upon the people, western forms of government, and encouraged marriage between Portuguese officers and native women and tried to create a little Portugal in western India. Some of the results of Portuguese rule have endured. Christianity and western civilization are nowhere more native in India than in the territory of Goa. The union of the West and the East nowhere is as complete as there. But the dominion of Portugal did not continue long in India.

It failed, not so much on account of their policy of Thorough, as because the Portuguese dominion was not well supported from Portugal. Although the Portuguese policy was thorough in its ideals, it was not thorough in its methods. It was too far-flung an empire to last without adequate organization. Portuguese India was only part of an empire that extended from the Cape of Good Hope to Malacca.

All this vast coast empire was under the rule of one man, the Viceroy of Goa. His powers were absolute: he could not be brought to justice for his acts, he was bound only by his oath to observe the regimentos. The Portuguese officials were given the right of carrying on commerce and their sole ambition was to make as much money as possible during their years of administration. The exactions of the Portuguese rulers hardly let them strike roots in the sympathies of the people. The financial support for the maintenance of the government and of the troops was truly insufficient. The Portuguese army was not numerous enough. The climate and the lack of missionaries played havoc with the morals of the ruling race. In addition to these internal causes there were the outside events that contributed to the breakdown of Portuguese rule in the East. The discovery of Brazil distracted the colonizing energies of Portugal. The sixty years' subjugation of Portugal to Spain drove England, her traditional friend, into rivalry and opposition. The Dutch rivalry added to the English opposition in driving some more nails into the coffin of Portuguese rule in India.

#### THE FRENCH FAILURE—1748-1763

The Dutch attempt at empire need not detain us long, for they aimed at trade only and they soon abandoned India for the more profitable exploitation of the Spice Islands. More memorable was the French bid for empire in India. This attempt at empire, like that of its more successful rival, started from the south-east. The great Dupleix made the discovery that the Moghul empire was a Colossus with feet of clay, that the country could be easily conquered with the aid of Indian agency, i.e. with the aid of Indian soldiers led by French generals and administrators. Dupleix aimed at conquest rather than commerce and if left to himself and supported from France, he might have achieved his ambition of establishing a French empire in southern India on the ruins of Moghul rule. But the rivalries of Dupleix and Labourdonnais, of Lally and Bussy, the little support that the French administration in

India got from France, the wars of Louis XIV with the Dutch, the close dependence of the French East India Company on the French State, which was then suffering from degeneration and decay, hardly contributed to secure the success of the French attempt at empire in India. Although Dupleix did not succeed, his methods and policy adopted by the English, whom he hated and strove his hardest to drive out of India, led his enemies to that empire which he could only dream of, but never attain.

## THE ENGLISH EFFORT—1748—

Although the English East India Company did not blunder into empire, it certainly was driven into it by the force of circumstances by which it was surrounded. British rule in India was not founded in a fit of absence of mind. Presence of mind there was and plenty of it, as well as plan and direction. But the plan and direction were not political, but commercial. Empire was grasped at so that commerce might be the better protected. The flag was flown to protect the trade and it was flown because there was no other flag flying in southern India. The English stepped into the political vacuum created by the failure of the Moghuls and its viceroys to maintain that measure of peace and order which is the first of the services to be rendered by a State to its peoples. The overthrow of the kingdoms of Bijapur and Golkunda by Aurangzeb, removed the last centres of government in the Deccan. The Nizam-ul-Mulk and the Nawab of the Carnatic could not hold their own against the rising power of the Mahrattas. The fight for dominion between the French and the English had been going on unofficially before the two States came to grips with each other in the Seven Years' War in 1763, the end of which saw the establishment of English rule in the south practically all over the east coast of the Madras Presidency.

Clive, who laid the foundations of the English dominion in Madras, went to Bengal and the grant of the Divani of Bengal,

Bihar and Orissa to him in 1765 and the designs and intrigues of Warren Hastings by the end of 1770 secured practically the whole of the eastern portions of northern India to British rule. Meanwhile the movement towards expansion from the west had been organized. The intervention of the English government of Bombay in the politics of the Mahrattas, begun by Warren Hastings and developed by Wellesley, brought by the end of the eighteenth century the present territories of Bombay Presidency except Sind, the Central Provinces and Guzerat into the hands of the English. Meanwhile, the ambitions of Hyder Ali of Mysore, whose terrible incursions in southern India are painted with the brush of imagination by Burke in his famous speech on the Nabob of Arcot's debts, and the never-dying zeal of his still more terrible son, Tippu, gave the English an opportunity of incorporating Canara and Malabar into their territory and thus creating the present Presidency of Madras.

The victorious war with the Mahratta Confederacy, 1798-1805, brought the Doab, or the territory round Delhi, into the hands of the British. The forward policy of Wellesley (1798-1808), which was responsible for the rapid extension of British rule in central India, also accounted for the incorporation of a large portion of the territory of the Nawabs of Oudh, thus extending English rule into the middle portion of northern India, the old Madya-Desa of ancient India. Wellesley's policy of subsidiary and subordinate alliances with Indian princes like the Nizam and the Peshwa, Mysore and Oudh and Scindia and Holkar, inaugurated their conversion into subordinate rulers deprived of external sovereignty and independence. It was Wellesley also that inaugurated the policy of making the British power the paramount sovereign power in India and constituting it the keystone of the arch of dominion in the country. Wellesley's forward policy, after an interval of non-intervention, was continued by his great successors. The Earl of Minto (1807-1813), by a treaty with the great Ranjit Singh, extended the British frontier up to the Sutlej in the

north-west. The Marquess of Hastings (1813-1820) put down the anarchy of the Pathans and Pindaries in central India, added the Saugor and Nagpur districts, later incorporated in the Central Provinces, to British India and brought Rajputana under the protection of the English rule. Lord Hardinge's Sikh Wars (1845-1848) led to the annexation of the Punjab; Lord Dalhousie (1848-1856), with his doctrine of lapse, annexed Oudh Satara, and the Berars and constituted the Central Provinces. With the quelling of the Sepoy Mutiny of 1857, supported by the dispossessed dynasties of the north, the era of the permanent political unity of India had at last commenced. When as a result of the failure of the Sepoy Mutiny, the East India Company was overthrown and the Crown and Parliament of England took up the government of the country, the political unity of India was at last achieved.

#### BRITISH ORGANIZATION OF INDIA

Together with the extension of English rule in the country, there went also an attempt at organizing the internal administration, so that the increasing political unity of the country could be realized in adequate and useful institutions of government. As soon as the East India Company began to make conquests, a unifying administration was given to it by Lord North's Regulating Act of 1773, which established a Governor-General in Council, who, however, controlled only the relations of the other Presidencies towards Indian Princes. This control, however, was further increased by Pitt's India Act of 1784, by which the other Presidencies were subject to Bengal in all matters of war and the conduct of war. A supreme Court of Justice, whose jurisdiction extended over Bengal, was also established at Calcutta, which came to be the political capital of British India. The political unity of India received the recognition of a parliamentary statute in 1813, when the undoubted sovereignty of the Crown and the parliament of the United Kingdom was asserted over all India. The authority of the Governor-General in Council over the presidencies of



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Madras and Bombay given by the Regulating Act of 1773 was increased by later Statutes. By the Act of 1833 the provincial governments were obliged to obey the Governor-General in Council.

### INDIAN UNITY ORGANIZED

Although the presidency governments of Madras and Bombay had acquired the power of legislating over their territories as early as 1801, they lost it between 1833 and 1861, and ever after the latter date legislative and executive power over the whole of India was concentrated in the hands of the Government of India. The undisputed supremacy of the Government of India in regard to foreign affairs, national defence and the Indian States has at last secured for India for all national services that strong centralized government which she had been denied during the centuries of her existence. And even in regard to legislation the overseeing authority of the central government is recognized. Till the Government of India Act of 1919 came into operation, provincial Acts had to receive the approval of the Governor-General, and even now they may be reserved for consideration by the higher authority. Even after 1919, there has not been so much devolution as delegation of authority, for even in legislation in "transferred subjects" the previous sanction the Government of India is required for legislation and the Governor-General's veto is applicable. And in the so-called non-regulation territories the Government of India have the sole right of legislation and administration.

### LACK OF JUDICIAL CENTRALIZATION

Only in the sphere of judicial administration has there been no attempt at centralization. For although a Supreme Court was established in 1773 at Calcutta, it was not supreme over the High Courts established in the presidencies of Madras and Bombay and in other provinces in 1860 and which have been independent of each other. The legal unity of India has, however, been advanced by the passing of the famous Codes

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(between 1859-1861)—the Indian Penal Code, the Codes of Criminal and Civil Procedure.

### THE SOVEREIGNTY OF ONE CENTRAL INDIAN GOVERNMENT

In regard to the relations between the Government of India and the Indian States, the principle of the paramountcy of the British Government asserted by Wellesley has continued to be one of the fundamental principles of Indian policy. While Lord Dalhousie's doctrine of lapse has been given up, the principle of the supreme sovereignty of the British Government has been asserted and acted upon even in very recent times. The fiction of sovereignty and of international status created by treaties came to an end in 1858, when the Crown took upon itself the government of the country. The Indian ruling chiefs exercise only a limited authority, have no foreign relations of their own and have no status in international law. At length India has secured the benefit of a strong central administration.

### INDIA MADE ONE

India has not merely been conquered, but is being organized into unity and progress and not least into liberty. Railways, posts and telegraphs and education—all governmental and quasi-governmental enterprise—are making for the unity of the country. Factory industry established by British capital is also breaking the excessive ruralization of India. As the Maharajah Holkar of Indore told Lord Lytton at the Delhi Assemblage of 1877, "India has been till now a vast heap of stones, some of them big, some of them small; now the house is built and from top to basement each stone of it is in the right place." It is facile to detect a note of princely politeness in this eulogy of British rule in India. There is much the British might have done which they have not done, and much they have done which they ought not to have done. They might have done more than they have done for the unity and progress and liberty of India if they had consciously and of set purpose placed these ideals before them from the beginning. But

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compared to what their predecessors had done for the country their achievement marks a turning-point in history.

The State has at last come to its own in India. Society no longer bestrides the narrow world of public affairs as it did in the past. By means of social legislation, halting and infrequent though it has been, and administrative direction the domination of Caste has been considerably modified. Politics and not religious or philosophical speculation has become the favourite study of the intellectual classes. The very acts and omissions of the English rulers have provoked political activity such as the country had not known before. The most formidable native reaction against British rule—the political theory and methods of Mr. Gandhi—has brought politics to the doors of the masses. On the village government of Hindu India, on the provincial organization of the Muslims, the English have built a well-knit system of Indian government. To the legacies of the past, they have added their own gifts of political unity and freedom and progress.

“From out the sunset pour’d an alien race,  
And fitted stone to stone again . . .”

and India has at last been set on the road to its own making.



## EPILOGUE

After writing the last of these studies on the history of the State, the writer stepped out into the grounds of a house in a city of the Dekhan plateau where most of these sketches were first written. It was a moonlit night, the moon being in its first phase, but some stars came out pricked, as it were, by an embroiderer's needle against a pale-blue ground of velvet. In the south was the unmistakable Southern Cross, a little towards the east was the Scorpion and towards the north was the Great Bear. These constellations, which look down upon the doings of men and the life of the States, looked with the same unchanged aspect on Sumer and Akkad and Assyria, on Egypt and China, on the principalities of ancient India, on the city-states of Greece, on the republican empire of Rome, on Peru, on Mexico and on the States of the Middle Ages of Europe. They have looked down on the rise and fall of so many States, the revolutions in so many others and the decay and death of still others.

“They say the lion and the lizard keep  
The courts where Jamshed gloried and drank deep.”

By the side of the life and fortunes of men and States, these bodies bear a severe aspect changeless and unchangeable. But which of us would care to exchange the life of this, our earth, with all the sins and miseries and littlenesses and imperfections of man as an individual and as a member of society or the State, with all the ups and downs of his fortunes, with all the vagaries of political chances or changes, for the sphere of the life of one of those stars?

Man's instinct for realizing unity in variety, liberty in society, and progress towards perfection, can be realized only in the State. To the State man's life is bound by the cords of his own being. He has suffered from it, but he cannot do away with it. The fate of States cannot help exciting in us “the far-off interest

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of tears." Man can neither kill it, for that would be killing a part which is larger than the whole of himself, nor could he worship it, for that would be an idolatry worse than the idolatry of wood or stone. But it is the secular instrument of his perfection. It is the institution *sub specie aeternitatis* which exists for the realization of his ends as man and member of society. It is through and by means of the State that man can perfect his social and individual being.

The State has contributed so much to the development of man in other parts of the world that it may not be daring to hope that the future progress of India also is bound up with the service which its people may render to the State. The service of the State is a service which can bind all communities together in a life of fellowship. While the service of community or religion may divide man from man in India, the service of the State may bind different parts and different religions and different classes and communities in the bonds that give unity and consequent progress and liberty. India can realize in the State that feeling of a common nationality, those ends of national civilization and culture which have been denied to it throughout its history. The State that has at last been made in India may yet be the making of India. And coming as it does so late in its life to the realization of the State, India may yet play a fresh and memorable rôle in its history. It may have its own gifts of help to bring to the treasure-house of politics. And if it is true to the twin stars of unity and liberty, it may stand forth as the standard-bearer of the State in the lands of the East. And its people may yet, as the great peoples of history, be the guardian and trustee of the idea and institutions of the State.

*Et quasi cursores vitae lampada tradunt.*

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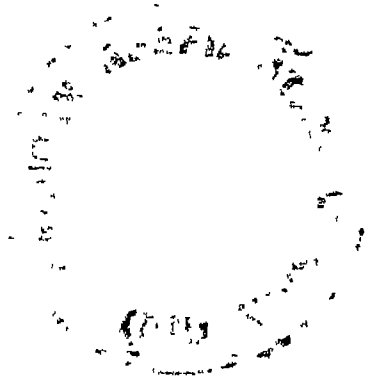
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